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NAVAL COURTS
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NAVY DEPARTMENT,
Washington, August 18, 1917.

"Naval Courts and Boards" is approved and published for the guidance of the naval service. It supersedes "Forms of Procedure for Courts and Boards in the Navy and Marine Corps, 1910," and the regulations and instructions applying exclusively to naval courts and boards heretofore contained in the Navy Regulations.

JOSEPHUS DANIELS,
Secretary of the Navy.

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NAVAL COURTS AND BOARDS.

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PART I.

INSTRUCTIONS FOR COURTS AND BOARDS IN THE NAVY.

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I.

THE AUTHORITY AND THE SOURCES OF NAVAL LAW.

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THE AUTHORITY AND THE SOURCES OF NAVAL LAW.

1. Military jurisdiction, forms of.—A concurring opinion in a celebrated case decided by the Supreme Court (Ex parte Milligan, 4 Wall., 2) recognized under the Constitution of the United States three distinct forms of military jurisdiction—namely, the jurisdiction coming under:

(1) Military law, which was held to be that which is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces. It is exercised both in peace and war.

(2) Military government, which was described as the exercise of military jurisdiction by a military commander, under the direction of the President, with the express or implied sanction of Congress, superseding, as far as may be deemed expedient, the local law. This form of military jurisdiction ordinarily exists only in time of war, and is exercised only without the boundaries of the United States or within States or districts occupied by rebels treated as belligerents.

(3) Martial law, which was distinguished as that branch which is called into action by Congress, or temporarily by the President when the action of Congress can not be invited, in the case of justifying or excusing peril, in time of insurrection or invasion, or of civil or foreign war, within districts or localities whose ordinary law no longer adequately secures public safety and private rights.

2. Military law.—With the exception of Chapter II (which has to do with the second and third of the above-named forms of military jurisdiction) the subject matter of "Naval Courts and Boards" comes under the first form—namely, military law.

Military law may be defined as "the body of rules and ordinances prescribed by competent authority for the government of the military state considered as a distinct community." (20 A. & E. Ency. Law, 618.) It is a fundamental branch of the national law, has the same foundation; and its rules, its extent, and its limitations are as well defined as any other branch of the law administered by the Federal Government. While military law was in existence long before the adoption of the Constitution of the United States, yet as our law, both public and private, may be considered as dating from the time of this instrument, it is customary to look to the Constitution as the source of our military law. Among the powers of Congress founded thereon are many provisions which may be re-

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garded as the source or sanction of our present military law. Of these some of the broader are the provisions empowering Congress "to raise and support armies"; "to provide and maintain a Navy"; "to make rules for the government and regulation of the land and naval forces"; and, perhaps the most important of all, the provision of the fifth amendment to the Constitution to the effect that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, *except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger.*"

From the above it follows that "military law" is a broad term and comprises the code of laws which govern the Army, Navy, Marine Corps, Coast Guard, and any other organization under military discipline and forming a part of the military establishment of the United States. The fact that these organizations are each governed by a somewhat different code, and that the jurisdiction each exerts does not, in general, extend beyond its own organization, in no sense affects the fact that all are equally governed and administered under military law. Military law thus governs the Navy as well as the Army, but while the government of the latter is based upon the Articles of War, that of the former is based upon the Articles for the Government of the Navy.

3. Naval law.—The term "naval law" is used as a matter of convenience to refer to and distinguish the naval code, courts, and laws from the broad term "military law." It is that branch of military law which specifically governs the Navy as a separate community; or, more precisely, it is the law governing the officers and enlisted men of the naval forces as such. (But see sec. 25 in connection with persons coming under naval jurisdiction.) (Naval law is active in time of peace as well as in time of war and is largely, but not entirely, statutory in its character.)

4. Court-martial.—The court-martial is the principal tribunal by means of which naval law is administered. It is a court convened pursuant to naval law for the adjudication of offenses against the naval code. Naval courts-martial are established by virtue of the authority conferred by the Constitution on Congress to make rules for the government and regulation of the naval forces. Under this authority, taken in connection with that conferred in the fifth amendment to the Constitution (see sec. 2), Congress may provide for the trial and punishment by court-martial, without indictment or the intervention of a jury, of all offenses committed by persons in the naval forces of the United States. (As to the jurisdiction of naval courts-martial see sec. 21.)

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5. Sources of naval law.—Very generally, there are two sources of naval law:

(1) Written sources.

(2) Unwritten sources.

6. ***The written sources*** **of naval law are:**

(*a*) STATUTORY ENACTMENTS INCLUDING THE ARTICLES FOR THE GOVERNMENT OF THE NAVY.

The principal body of naval law is contained in the statutes enacted by Congress relative to the government and regulation of the naval forces. Of these the most important are to be found in the body of statutory rules known as the Articles for the Government of the Navy (sec. 1624 of the Revised Statutes). These articles, together with subsequent statutory enactments amending or affecting them, are quoted in Chapter III. However, there are many important statutory provisions respecting the administration of the Navy which are not embraced in these articles but are to be found in the Revised Statutes and in the volumes of the Statutes at Large, the former being a codification of the laws of the United States which were in existence prior to December 1, 1873, and the latter containing statutes subsequently enacted. The statutes relating to the Navy are collected in a departmental publication entitled "Laws Relating to the Navy, Annotated."

(*b*) NAVY REGULATIONS, AND INSTRUCTIONS ISSUED BY THE SECRETARY OF THE NAVY.

The *Navy Regulations* are next in point of authority to the formal enactments of Congress. They comprise the administrative rules relating to the Navy, and are authorized by section 1547 of the Revised Statutes, which provides that "the orders, regulations, and instructions issued by the Secretary of the Navy prior to July 14, 1862, with such alterations as he may since have adopted, with the approval of the President, shall be recognized as the regulations of the Navy, subject to alterations adopted in the same manner." In naval matters the President speaks and acts through the Secretary of the Navy, and regulations issued by the latter are in legal contemplation the regulations of the President. In some instances the President expressly approves; in others his approval is implied; but the legal effect is the same, all regulations promulgated by the Secretary of the Navy being equally binding and having the full force and effect of law whether or not expressly approved by the President.

In addition to the Navy Regulations there are other regulations or instructions issued by the Secretary of the Navy for the guidance of persons in the Naval Establishment and which have full force

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and effect as regulations on all such persons. Among these are General Orders, Uniform Regulations, Signal and Drill Books, "Naval Courts and Boards," and other similar publications.

7. *The unwritten sources* of naval law are:

(*a*) THE DECISIONS OF COURTS.

The decisions of courts, although written, are usually classed as a part of the unwritten law. "The decision of a court which establishes or declares a rule of law may be reduced to writing and published in the reports; but this report is not the law; it is but evidence of the law; it is but a written account of one application of a legal principle, which principle, in the theory of the common law, is still unwritten." (Bouvier, 370.) This applies as well to the decisions of executive authorities, opinions of law officers of the Government, and court-martial orders.

The Constitution provides for a judicial branch of our Government for the purpose of interpreting the laws. This function is exercised by means of the Federal courts before which doubtful questions of law arising under the Federal Government are brought for decision. Of these the Supreme Court ranks first in point of authority, but the decision of an inferior Federal court, while not equal in weight to that of the Supreme Court, is none the less authoritative in the absence of a reversal by a superior tribunal. Accordingly, when a law relating to the Navy has been authoritatively interpreted by the proper courts, such interpretation becomes in effect a part of the law as fully as though it had been specifically written therein by Congress. Decisions of State courts also frequently relate to the interpretation of laws affecting the Navy, but such decisions are not controlling on the Federal Government, but are merely instructive.

(*b*) THE DECISIONS OF THE PRESIDENT AND THE SECRETARY OF THE NAVY AND THE OPINIONS OF THE ATTORNEY GENERAL AND THE JUDGE ADVOCATE GENERAL OF THE NAVY.

Closely related to the decisions of courts in point of authority are the decisions of the President and the Secretary of the Navy. Under this classification fall also the opinions of the Attorney General, the chief legal adviser of the executive branch of the Government, and of the Judge Advocate General of the Navy. (For the distinction between decisions and opinions see C. M. O. 37, 1916, 6.) While the Navy Department is bound by interpretations placed on statutes by the Federal courts, this limitation does not restrict the department in making authoritative decisions on matters coming within its jurisdiction and not governed by statute. To illustrate,

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the decision of the Federal courts that the statutes, prior to the act of August 29, 1916, 39 Stat., 651 (see p. 46), did not admit of an interpretation permitting an enlisted man of the Marine Corps to be tried by a naval general court-martial for an offense committed while serving with the Army by order of the President, was binding upon the Navy Department until nullified by the above enactment. (See C. M. O. 31, 1915, 6–10.) On the other hand, no statute lays down the rules of evidence to govern naval courts-martial, and the decisions of the department on such a question are the highest authority for a naval court-martial to follow.

(*c*) COURT-MARTIAL ORDERS.

The decisions of the department on questions of law and evidence are promulgated to the service through the medium of court-martial orders. The Navy Regulations provide that court-martial orders "shall have full force and effect as regulations for the guidance of all persons in the Naval Establishment," and officers of the naval service are responsible for the observance of instructions contained therein, just as they are for the observance of other lawful regulations. It is to be noted in this connection that certain information is promulgated in a "bulletin" contained in monthly court-martial orders, which information is published as a matter of convenience and is not intended "to have the full force and effect of regulations as do remarks forming a part of court-martial orders proper."

(*d*) CUSTOMS AND USAGES OF THE SERVICE.

Circumstances from time to time arise for the government of which there are no written rules to be found. In such cases customs of the service govern. Customs of the service may be likened, in their origin and development, to the portions of the common law of England similarly established. But custom is not to be confused with usage; the former has the force of law; the latter is merely a fact. There may be usage without custom, but there can be no custom unless accompanied by usage. Usage consists merely of the repetition of acts, while custom is created out of their repetition.

Custom.—The following are the principal conditions to be fulfilled in order to constitute a valid custom:

(1) It must be long continued.
(2) It must be certain and uniform.
(3) It must be compulsory.
(4) It must be consistent.
(5) It must be general.
(6) It must be known.
(7) It must not be in opposition to the terms and provisions of a statute or lawful regulation or order.

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As usage constantly observed for a long period results in the establishment of a custom, so long continued nonusage will operate to destroy a particular custom—that is, to deprive it of its obligatory character.

The field of operation of the unwritten naval law is extensive. It is applied in defining certain offenses against naval law and in determining whether certain acts or omissions are punishable as such, as in cases coming under article 22 of the Articles for the Government of the Navy. (See Ch. III.) At times, also, custom is appealed to as a rule of interpretation of terms technical to the naval service.

Usage.—Mere practices or usages of service, although long continued, are not customs and have none of the obligatory force which attaches to customary law. The fact that such usages exist, therefore, can never be pleaded in justification of conduct otherwise criminal or reprehensible, nor relied upon as a complete defense in a trial by court-martial. With the permission of the court, however, they may be introduced in evidence, with a view to diminishing to some extent the degree of criminality involved in the offense charged.

8. Digest of decisions affecting naval law.—It naturally follows that in the application of naval law there arise from time to time questions which have to be decided by the Navy Department. The more important of such decisions are published in court-martial orders for the information of the naval service. In connection with these orders there is published annually an index-digest of the orders of the year. Also, the Naval Digest, a departmental publication, contains a digest of all court-martial orders (1879–1916) and of the more important decisions and opinions affecting naval law. Thus it is possible for officers called upon to apply naval law to readily find the decisions of the department affecting the application of this law.

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II.

MILITARY GOVERNMENT AND MARTIAL LAW.

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MILITARY GOVERNMENT AND MARTIAL LAW.

9. Introductory.—While the two latter of the three forms of military jurisdiction mentioned in section 1—namely, military government and martial law—belong to a wider field of jurisdiction than that ordinarily exercised in naval administration, yet it not infrequently happens that the Naval Establishment is called upon to act beyond its own particular sphere, which is governed by naval law, and must thereby assume jurisdiction over this wider field, which is based upon the laws of war. It is important, therefore, that the naval service should be familiar with the principles of military government and martial law. Unlike naval law, which is mostly statutory, they are based upon an unwritten code known as the "laws of war," and are not capable of exact definition. While these forms of military control can not be here covered at length and with completeness, yet, in the absence of any present naval publication on the subject, the following is given for the purpose of serving as an outline of the underlying principles involved and as a guide to assist officers in the naval service who may be called upon to apply these forms of military control:

10. Distinction between military government and martial law.—In earlier times no distinction was drawn between military government and martial law, and even to-day it is not uncommon to find some confusion in the indiscriminate use of these terms. However, since the recognition of this distinction in the Supreme Court (see sec. 1), practically all authorities distinguish the two terms. It is therefore necessary to an understanding of the subject to have this distinction clearly in mind. To this end the following is quoted from Winthrop, page 1245: "Military government, as the term is here employed, is thus a government exercised over the belligerent or other inhabitants of an enemy's country in war foreign or civil; *martial law* over our own immediate fellow citizens, who, though perhaps disaffected or in sympathy with the public enemy, are not themselves belligerents or, legally, enemies. The *occasion* of military government is war; the occasion of martial law is simply public exigency, which, though more commonly growing out of pending war, may yet present itself in time of peace. The *field* of military government is enemy's country; the field of martial law our own

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country or such portion of it as is involved in the exigency. Military government is further distinguished from martial law in that, unlike the latter as commonly instituted, it calls for no formal proclamation or declaration of its inauguration, but exists simply as a consequence of the hostile occupation. A proclamation or public notice to the inhabitants, informing them of the extent of the occupation and of the powers proposed to be exercised, is a customary measure, but one not essential to the initiation of the status or jurisdiction."

11. **Military government.**—As defined in Manual for Courts-Martial, United States Army, page 1, military government is "military power exercised by a belligerent, by virtue of his occupation of an enemy's territory, over such territory and its inhabitants." This applies not only to the occupied territory of a foreign enemy in war, but likewise to the territory of the United States in cases of insurrection and rebellion of such magnitude that the rebels are treated as belligerents. Quoting from Davis, page 300, "it [military government] applies to territory over which the Constitution and laws of the United States have no operation and in which the guaranties which are contained in that instrument are entirely inoperative. Its exercise is sanctioned because all powers of sovereignty have passed into the hands of the commanding general of the occupying forces and the local authority is unable to maintain order and protect life and property in the immediate theater of military operations, and the duty of such protection passes to the permanent or temporary transfer of sovereign power and authority to the occupying belligerent. In this case the mere fact of hostile occupation of the territory of the enemy constitutes notice to the inhabitants of the existence of the government by military occupation."

(It follows, then, that the authority for military government lies in the mere fact of occupation.) However, it is to be noted in connection with this form of government that while, as defined above, it is designed principally to meet the conditions arising during a state of war, it may none the less be applied to a peaceful possession, as, for example, the present (1917) government of Guam, for the essential feature of this government is that it be actually exercised over a country in full possession, and as such it may continue without the inhabitants of such country being necessarily characterized as enemies. Yet the necessity for military government arises primarily from a state of war or a state approaching war, and is founded upon the laws of war, and ordinarily is administered only in the conduct thereof or pursuant thereto. For this reason it is customary for writers on the subject to refer to a state of belligerency as a condition precedent to its function. It is likewise to be noted that while such writers frequently confine their comments on this form of govern-

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ment to a contemplation of its exercise by the Army, such comments apply with equal force to its exercise by the Navy.

As to its function (quoting from Winthrop, p. 1246), military government, founded on actual occupation, "is an exercise of sovereignty, and as such dominates the country which is its theater in all the branches of administration. Whether administered by officers of the army of the belligerent or by civilians left in office or appointed by him (the military commander) for the purpose, it is the government of and for all the inhabitants, native or foreign, wholly superseding the local law and civil authority except in so far as the same may be permitted by him to subsist. Civil functionaries who are retained will be protected in the exercise of their duties. The local laws and ordinances may be left in force, and in general should be, subject, however, to their being in whole or in part suspended and others substituted in their stead, in the discretion of the governing authority."

As to the exercise of authority and functions of military government it was stated by the Supreme Court (see sec. 1) that it is "exercised by the military commander under the direction of the President, with the express or implied sanction of Congress." Quoting, in comment upon this statement, from Winthrop, page 1248, "Congress having, under its constitutional powers, declared or otherwise initiated the state of war and made proper provision for its carrying on, the efficient prosecution of hostilities is devolved upon the President as Commander in Chief. In this capacity, unless Congress shall specially otherwise provide, it will become his right and duty to exercise military government over such portion of the country of the enemy as may pass into the possession of his army by the right of conquest. In such government the President represents the sovereignty of the Nation, but as he can not administer all the details, he delegates, expressly or impliedly, to the commanders of armies under him the requisite authority for the purpose. Thus authorized, these commanders may legally do whatever the President might himself do if personally present, and in their proceedings and orders are presumed to act by the President's direction or sanction." As to the extent of the power thus conferred (quoting further), "the power of military government thus vested in the President or his military subordinates is a large and extraordinary one, being subject only to such conditions and restrictions as the law of war, in defining the particulars to which it may extend, imposes upon the scope of its exercise. As it is expressed by the Supreme Court, the governing authority 'may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases save those which are found in the laws and usages of war.' (New Orleans *v.* Steamship Co., 20 Wall., 387.)" But this

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broad statement is somewhat qualified by the language of the Supreme Court in a later case, to the effect that "while his [military commander's] power is necessarily despotic, this must be understood rather in an administrative than in a legislative sense. While in legislating for a conquered country he may disregard the laws of that country, he is not wholly above the laws of his own. * * * His power to administer would be absolute, but his power to legislate would not be without certain restrictions—in other words, they would not extend beyond the necessities of the case." (Doolev *v.* United States, 182 U. S., 222.)

12. Martial law.—Martial law, as defined in Manual for Courts-Martial, United States Army, page 1, is "military power exercised in time of war, insurrection, or rebellion in parts of the country retaining their allegiance, and over persons and things not ordinarily subjected to it." That is, it is the law exercised by the commander of armed forces of a State which have occupied certain territory of such State because by reason of some public exigency the due operation of ordinary law in such territory has been obstructed to such extent that life, property, and other rightful enjoyments of the inhabitants can not be protected thereby. In regard to the extent of the jurisdiction and power of martial law there is some difference of opinion among authorities and conflict in the decisions of courts. The following statement, however, as to the limitations of this form of law is believed to be a safe guide: "The employment of martial law has been likened to the exercise of the right *of self-defence* by an individual. Its occasion and justification thus is necessity. But though in general without other limit than the discretion of the commander upon whom its execution is devolved, it is not an absolute power, but one to be exercised with such stringency only as circumstances may require. * * * Martial law is indeed resorted to as much for the protection of the lives and property of peaceable individuals as for the repression of hostile or violent elements. It may become requisite that it supersede for the time the existing civil institutions; but, in general, except in so far as relates to persons violating military orders or regulations, or otherwise interfering with the exercise of military authority, martial law does not in effect suspend the local law or jurisdiction or materially restrict the liberty of the citizen." (Winthrop, p. 1279.) Thus the military commander of forces occupying territory under martial law is not a military governor of such territory. Such military commander should, however, use such force as may be necessary to maintain order and protect persons and property from violence. Further than this he should not interfere with persons or property rights. But so long as martial law obtains the inhabitants of the territory to which it applies must look to the military forces for protection. To

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this end the military commander may try by military tribunals offenders against the peace and military authority, but he may not go beyond the necessities of the case and attempt to usurp the full legislative, executive, and judicial powers over the territory under his control.

13. Exceptional military courts.—Since a naval court-martial is a court of limited jurisdiction, restricted by law to the trial of officers and men of the naval service, it is apparent that, in order to exercise the power conferred upon the Naval Establishment when its duty is such as to place under it a wider jurisdiction in accordance with the principles of this chapter, it is necessary to employ tribunals other than those considered in the following chapters in connection with the administration of naval law. Such tribunals have been referred to by the Navy Department as *exceptional military courts*, and include the *military commission*, the *superior provost court*, and the *provost court*.

These exceptional military courts, unlike the court-martial, derive their sanction from the laws of war and not from the enactments of Congress. The constitution and procedure of such courts is nowhere prescribed by statute. Nor does any law limit the sentence which may be adjudged by such courts. The offense, which may be either a civil crime or violation of the laws of war or orders of military authority, may be charged by merely setting forth a designation of the offense in cases of minor offenses triable by provost court; but, in the cases of the more serious offenses triable by superior provost court and military commission, there should be a detailed specification as in court-martial practice, and such specification should show on its face the circumstances conferring jurisdiction; as, for example, that the offender was an inhabitant of a district under military government.

14. Conduct of exceptional military courts when held by naval authority.—The Navy Department, in C. M. O. 13, 1916, laid down the following instructions in regard to the conduct of exceptional military courts when held by naval authority:

"When exceptional military trials, whether by military commissions or provost courts, are held by naval authority, the commission or court conducting such trials shall be constituted and organized and shall conduct its proceedings in the manner provided for naval courts-martial or deck courts, so far as the exigencies of the service may permit. Similarly, records shall be kept of the proceedings, which upon completion shall be transmitted to the Judge Advocate General of the Navy to be revised and recorded. No sentence of death shall be carried into execution until confirmed by the Secretary of the Navy; all other sentences may be executed upon approval of the convening authority. The jurisdiction of every such commission or provost court, in the matter of the punishments which it may

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adjudge, shall be limited in the discretion of the convening authority and shall be expressly stated in his order convening such commission or provost court."

Supplementary to the above and subject to the remark that the military commander of occupying forces is, by the laws of war, charged with the administration of the occupied territory, and is, therefore, not to be unduly restricted in the measures to be employed in such administration, the Navy Department, in C. M. O. 15, 1917, laid down the following as a guide in respect to the above-mentioned military courts:

"*A military commission* should, in general, correspond to a general court-martial both as to its constitution and as to its proceedings. Except in a case where the convening authority may, for military reasons, direct otherwise, all evidence taken before such commission shall be recorded as in general courts-martial. A military commission should be limited in the punishments which it may adjudge only to such an extent as the convening authority may deem proper.

"*A superior provost court* should, in general, correspond to a summary court-martial both as to its constitution and as to its proceedings. Except where the convening authority may, for military reasons, direct otherwise, evidence introduced before such court shall be recorded. A superior provost court ordinarily should not be granted authority to impose sentences involving confinement for more than five years nor fines of more than $3,000.

"*A provost court* should, in general, correspond to a deck court both as to its constitution and as to its proceedings. Evidence taken before such court need not ordinarily be recorded. A provost court ordinarily should not be granted authority to impose sentences involving confinement for more than six months nor fines of more than $300.

"The authority to convene the above-mentioned exceptional military courts vests only in the military commander or military governor of an occupied territory, and all such courts may be ordered only in the name of such commander or governor. When a military commander or governor desires to authorize an officer under his command to convene any of the above courts he may delegate such authority to a subordinate, but the latter may so act only as a representative and in the name of the military commander or governor. When so acting, such subordinate officer may, subject to any action in remission or mitigation he may see fit to take, upon his own approval, put into immediate execution the sentences of such exceptional military courts as the military commander or governor has empowered him to convene. But in all cases the records of such courts shall be forwarded to the military commander or governor, who shall review all such records, and who may set

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aside the proceedings, or remit or mitigate, in whole or in part, the sentence imposed by any military commission, superior provost court, provost court, or other exceptional military court convened by his order or by that of his predecessor in command, or by that of any officer under his command or the predecessor of any such officer. Also nothing herein shall be taken to modify the limitation prescribed in C. M. O. 13, 1916, 6 [above quoted], in regard to the execution of a death sentence.

"In so far as practicable, the employment of exceptional military courts should, as a general rule, be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority.

"Inasmuch as the most frequent offenses are the minor offenses which should be tried by provost court, the following form is given to guide in such cases:

"PRECEPT.

"(Place and date.)

"Captain A——— B———, U. S. Marine Corps, is hereby ordered as provost court for the district of ——— (or otherwise describe the locality) for the trial of such of the inhabitants or sojourners therein, not including members of the military services of the United States (and other exceptions if desired), as may commit offenses not deemed to warrant punishment exceeding confinement, with or without hard labor, for thirty days and fines not exceeding $100 (and any other restrictions upon the offenses coming under the jurisdiction of this court which may be desired).

"All cases brought before this court which the court shall deem deserving of a greater punishment than that above prescribed shall be certified to the superior provost court for the district of ——— and the offenders shall be ordered kept in confinement awaiting the action of such superior court (or shall be reported to the undersigned for other disposition of their cases).

"Reports of cases tried and dispositions thereof shall be rendered daily to the undersigned.

"C——— D———,
"*Rear Admiral, U. S. Navy,*
"*Commanding U. S. Forces Occupying* ———.

"When the authority to convene such courts has been delegated by the military commander to a subordinate the precept should so state. Thus the above should read:

"In accordance with the authority delegated to me by Rear Admiral C——— D———, U. S. Navy, commanding the U. S. forces occupying ———, under date of ———, Captain A——— B———, U. S. Marine Corps, is hereby ordered, etc. * * *

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"RECORD OF PROCEEDINGS.

(Place and date.)

"Proceedings of Provost Court held for the district of ———, by the authority of (name and office of the convening authority), under date of ———.

"The court met at 10 a. m.

"E——— F——— was arraigned on the charge of ———, and pleaded as follows:

"Witnesses for prosecution:

"Witnesses for defense:

"(Testimony of witnesses need not be recorded.)

"Finding: Guilty. (Not guilty).

"Sentence: Confinement for — days (with or without hard labor); or, to be fined ——— dollars; or, confinement for — days and to be fined ——— dollars.

"A——— B———,
"*Captain, U. S. Marine Corps.*
"*Provost Court.*

"G——— H——— was arraigned, etc.

"The court adjourned at ———."

15. Exercise of military government and martial law by the Navy.—Generally, it may be said that while military government and martial law both derive their sanction from the laws of war, this code is adopted by the former to a greater extent than by the latter. Both are resorted to by reason of the needs of the occasion; the former status arising from a foreign occupancy, the latter from a domestic necessity. As to the application of these principles by naval authority, the normal situation requiring same would be that arising from the occupation of a foreign port and its contiguous territory by naval forces, thus making it necessary for the commander to institute military government. It may happen, if the distinction set forth in this chapter is not observed, that a military commander will be exercising all the functions of military government and yet refer to the existing status as one of martial law. As has been seen, military government is a question of fact, and the important thing is that it actually be established. Its prerogatives and functions then naturally follow, irrespective of the term which may be used to refer to the exercise of this power. The terms *military government* and *martial law* merely describe states of affairs which are sanctioned by the unwritten law, and are not terms of the written law on which states of affairs are predicated. The controlling factor is what the state of affairs happens to be, not what it is called. The use of the proper descriptive term tends to clarity, an inaccurate description leads to confusion; the actual operation is the same. Like-

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wise, in the matter of a proclamation declaring the establishment of a form of military control, the important thing is to set forth the state of affairs which exists, to define the district or territory to which the proclamation applies, to state the extent to which the civil administration will be affected, the manner in which it is desired that the inhabitants conduct themselves, the measures which will be resorted to—in short, the proclamation should be illuminative of existing conditions and of the will of the declaring power. While the conditions which might call for such proclamation are varied and in each case the particular circumstances must control, the following is given as a guide for cases in which it is desired to announce the establisment of military government in an occupied port and its contiguous territory:

PROCLAMATION.

The United States naval forces under my command have occupied the city of ———, ———. I therefore proclaim that in accordance with the laws of nations and the usages, customs, and functions of my own and other Governments, I am vested with the power and responsibility of government in all its functions throughout the city of ——— and the territory contiguous thereto, now occupied by the forces under my command, and such additional territory as may be hereafter occupied by such forces.

It is intended that civil affairs be administered by the existing local government, so long as peace and good order are maintained in the city. To this end all the municipal and other civil employees are requested to continue in their present vocations, without change, and the administration of civil functions and justice will continue through the usual offices and courts existing in the country, except in so far as relates to persons violating military orders or otherwise interfering with the exercise of military authority, in cases affecting the military forces of the United States, and in political cases.

All peaceful citizens can confidently pursue their usual occupations, feeling that, so long as they continue so to act, they will be protected in their persons, property, and private rights and relations. Offenses against the forces of the United States and in violation of the military orders or regulations or in interference with the exercise of military authority will be punished in accordance with the unwritten code which is known as the laws of war. For this purpose all offenders in the matters aforesaid shall be promptly seized, confined, and reported for trial by military commissions or provost courts, as the case may be, which will be appointed and conducted in accordance with the laws of war and the rules and regulations of the Government of the United States relating thereto.

The commanding officer of the forces of the United States will from time to time issue rules for the guidance of inhabitants, and will issue the necessary regulations and appoint the necessary officers for the proper administration of government.

Done at the city of ———, ———, this —— day of ———, 19—.

C——— D———,

Rear Admiral, United States Navy,

Commanding United States Forces Occupying ———.

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III.

ARTICLES FOR THE GOVERNMENT OF THE NAVY TOGETHER WITH SUBSEQUENT STATUTORY ENACTMENTS RELATING TO ADMINISTRATION OF JUSTICE IN THE NAVY.

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ARTICLES FOR THE GOVERNMENT OF THE NAVY, TOGETHER WITH SUBSEQUENT STATUTORY ENACTMENTS RELATING TO ADMINISTRATION OF JUSTICE IN THE NAVY.

16. History.—"Rules for the regulation of the Navy of the United Colonies" were adopted by the Continental Congress on November 28, 1775. These rules were reenacted and continued in force by an act of Congress approved July 1, 1797 (1 Stat., 525). Thereafter, on March 2, 1799, there was approved "An act for the government of the Navy of the United States." (1 Stat., 709.) On March 2, 1855, there was passed "An act to provide a more efficient discipline for the Navy." (10 Stat., 627.) And on July 17, 1862, there was enacted another "Act for the better government of the Navy of the United States." (12 Stat., 600.) The above acts are the principal sources of the present "Articles for the Government of the Navy."

17. The Articles for the Government of the Navy.—Section 1624 of the Revised Statutes is a codification, under the title of "Articles for the Government of the Navy," of the laws in existence prior to December 1, 1873, governing the administration of justice in the Navy. These articles comprise, in addition to the aforementioned acts, in whole or in part, the following legislation pertaining to the Navy:

Acts of August 26, 1842 (5 Stat., 535); July 30, 1846 (9 Stat., 44); August 5, 1861 (12 Stat., 316); February 13, 1862 (12 Stat., 340); March 13, 1862 (12 Stat., 354); July 14, 1862 (12 Stat., 565); March 2, 1863 (12 Stat., 696); March 3, 1863 (12 Stat., 737); May 16, 1864 (13 Stat., 75); July 13, 1866 (14 Stat., 92); March 2, 1867 (14 Stat., 516); July 15, 1870 (16 Stat., 334); June 6, 1872 (17 Stat., 261).

18. Subsequent statutory enactments.—The Articles for the Government of the Navy, as published in the Revised Statutes, have since been amended and affected by the following legislation:

Acts of March 16, 1878 (20 Stat., 30); March 3, 1893 (27 Stat., 716); February 25, 1895 (28 Stat., 680); February 27, 1895 (28 Stat., 689); March 3, 1899, section 13 (30 Stat., 1007); May 13, 1908 (35 Stat., 132); February 16, 1909 (35 Stat., 621–623); August 22, 1912 (37 Stat., 356); and August 29, 1916 (39 Stat., 586).

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19. The following is a compilation of "Articles for the Government of the Navy, together with subsequent statutory enactments relating to administration of justice in the Navy."

The Navy of the United States shall be governed by the following articles:

ARTICLE 1.

The commanders of all fleets, squadrons, naval stations, and vessels belonging to the Navy are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and any such commander who offends against this article shall be punished as a court-martial may direct.

ARTICLE 2.

The commanders of vessels and naval stations to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

ARTICLE 3.

Any irreverent or unbecoming behavior during divine service shall be punished as a general or summary court-martial may direct.

ARTICLE 4.

The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

1. Who makes, or attempts to make, or unites with any mutiny or mutinous assembly, or, being witness to or present at any mutiny, does not do his utmost to suppress it; or, knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer;

2. Or disobeys the lawful orders of his superior officer;

3. Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;

4. Or gives any intelligence to, or holds or entertains any intercourse with, an enemy or rebel, without leave from the President,

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the Secretary of the Navy, the commander in chief of the fleet, the commander of the squadron, or, in case of a vessel acting singly, from his commanding officer;

5. Or receives any message or letter from an enemy or rebel, or, being aware of the unlawful reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof;

6. Or, in time of war, deserts or entices others to desert;

7. Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust;

8. Or sleeps upon his watch;

9. Or leaves his station before being regularly relieved;

10. Or intentionally or willfully suffers any vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded; or maliciously or willfully injures any vessel of the Navy, or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger;

11. Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel;

12. Or strikes or attempts to strike the flag to an enemy or rebel, without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarter;

13. Or, in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;

14. Or, in time of battle, deserts his duty or station, or entices others to do so;

15. Or does not properly observe the orders of his commanding officer, and use his utmost exertions to carry them into execution, when ordered to prepare for or join in, or when actually engaged in, battle, or while in sight of an enemy;

16. Or, being in command of a fleet, squadron, or vessel acting singly, neglects, when an engagement is probable, or when an armed vessel of an enemy or rebel is in sight, to prepare and clear his ship or ships for action;

17. Or does not, upon signal for battle, use his utmost exertions to join in battle;

18. Or fails to encourage, in his own person, his inferior officers and men to fight courageously;

19. Or does not do his utmost to overtake and capture or destroy any vessel which it is his duty to encounter;

20. Or does not afford all practicable relief and assistance to vessels belonging to the United States or their allies when engaged in battle.

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ARTICLE 5.

All persons who, in time of war, or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death, or such other punishment as a court-martial may adjudge.

ARTICLE 6.

If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death.

ARTICLE 7.

A naval court-martial may adjudge the punishment of imprisonment for life, or for a stated term, at hard labor, in any case where it is authorized to adjudge the punishment of death; and such sentences of imprisonment and hard labor may be carried into execution in any prison or penitentiary under the control of the United States, or which the United States may be allowed, by the legislature of any State, to use; and persons so imprisoned in the prison or penitentiary of any State or Territory shall be subject, in all respects, to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which the same may be situated.

ARTICLE 8.

Such punishment as a court-martial may adjudge may be inflicted on any person in the Navy—

1. Who is guilty of profane swearing, falsehood, drunkenness, gambling, fraud, theft, or any other scandalous conduct tending to the destruction of good morals;

2. Or is guilty of cruelty toward or oppression or maltreatment of any person subject to his orders;

3. Or quarrels with, strikes, or assaults, or uses provoking or reproachful words, gestures, or menaces toward, any person in the Navy;

4. Or endeavors to foment quarrels between other persons in the Navy;

5. Or sends or accepts a challenge to fight a duel or acts as a second in a duel;

6. Or treats his superior officer with contempt, or is disrespectful to him in language or deportment, while in the execution of his office;

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7. Or joins in or abets any combination to weaken the lawful authority of, or lessen the respect due, to his commanding officer;

8. Or utters any seditious or mutinous words;

9. Or is negligent or careless in obeying orders, or culpably inefficient in the performance of duty;

10. Or does not use his best exertions to prevent the unlawful destruction of public property by others;

11. Or, through inattention or negligence, suffers any vessel of the Navy to be stranded, or run upon a rock or shoal, or hazarded;

12. Or, when attached to any vessel appointed as convoy to any merchant or other vessels, fails diligently to perform his duty, or demands or exacts any compensation for his services, or maltreats the officers or crews of such merchant or other vessels;

13. Or takes, receives, or permits to be received, on board the vessel to which he is attached, any goods or merchandise, for freight, sale, or traffic, except gold, silver, or jewels, for freight or safe keeping; or demands or receives any compensation for the receipt or transportation of any other article than gold, silver, or jewels, without authority from the President or Secretary of the Navy;

14. Or knowingly makes or signs, or aids, abets, directs, or procures the making or signing of, any false muster;

15. Or wastes any ammunition, provisions, or other public property, or, having power to prevent it, knowingly permits such waste;

16. Or, when on shore, plunders, abuses, or maltreats any inhabitant or injures his property in any way;

17. Or refuses, or fails to use, his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose;

18. Or, when rated or acting as master-at-arms, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismisses them without orders from the proper authority;

19. Or is absent from his station or duty without leave, or after his leave has expired;

20. Or violates or refuses obedience to any lawful general order or regulation issued by the Secretary of the Navy;

21. Or, in time of peace, deserts or attempts to desert, or aids and entices others to desert;

22. Or receives or entertains any deserter from any other vessel of the Navy, knowing him to be such, and does not, with all convenient speed, give notice of such deserter to the commander of the vessel to which he belongs, or to the commander in chief, or to the commander of the squadron.

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ARTICLE 9.

Any officer who absents himself from his command without leave may, by the sentence of a court-martial, be reduced to the rating of an ordinary seaman.

ARTICLE 10.

Any commissioned officer of the Navy or Marine Corps who, having tendered his resignation, quits his post or proper duties without leave and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of such resignation, shall be deemed and punished as a deserter.

ARTICLE 11.

No person in the naval service shall procure stores or other articles or supplies for, and dispose thereof to, the officers or enlisted men on vessels of the Navy, or at navy yards or naval stations, for his own account or benefit.

ARTICLE 12.

No person connected with the Navy shall, under any pretense, import in a public vessel any article which is liable to the payment of duty.

ARTICLE 13.

Distilled spirits shall be admitted on board of vessels of war only upon the order and under the control of the medical officers of such vessels, and to be used only for medical purposes.

ARTICLE 14.

Fine and imprisonment, or such other punishment as a court-martial may adjudge, shall be inflicted upon any person in the naval service of the United States—

1. Who presents or causes to be presented to any person in the civil, military, or naval service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

2. Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

3. Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

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4. Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

5. Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

6. Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the naval service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

7. Who, being authorized to make or deliver any paper certifying the receipt of any money or other property of the United States, furnished or intended for the naval service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

8. Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully and knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money or other property of the United States, furnished or intended for the military or naval service thereof; or

9. Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any other person who is a part of or employed in said service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such other person not having lawful right to sell or pledge the same; or

10. Who executes, attempts, or countenances any other fraud against the United States.

And if any person, being guilty of any of the offenses described in this article while in the naval service, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

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ARTICLE 15.

(Repealed by section 13 of the act of March 3, 1899.)

ARTICLE 16.

No person in the Navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment, unless it be for the better preservation thereof, or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States, before the same are adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, in order that judgment may be passed thereon; and every person who offends against this article shall be punished as a court-martial may direct.

ARTICLE 17.

If any person in the Navy strips off the clothes of, or pillages, or in any manner maltreats, any person taken on board a prize, he shall suffer such punishment as a court-martial may adjudge.

ARTICLE 18.

If any officer or person in the naval service employs any of the forces under his command for the purpose of returning any fugitive from service or labor, he shall be dismissed from the service.

ARTICLE 19.

Any officer who knowingly enlists into the naval service any person who has deserted in time of war from the naval or military service of the United States, or any insane or intoxicated person, or any minor between the ages of fourteen and eighteen years, without the consent of his parents or guardian, or any minor under the age of fourteen years, shall be punished as a court-martial may direct.

(This article was specifically amended as above given by the act of August 22, 1912 (37 Stat., 356).)

ARTICLE 20.

Every commanding officer of a vessel in the Navy shall obey the following rules:

1. Whenever a man enters on board, the commanding officer shall cause an accurate entry to be made in the ship's books, showing his name, the date, place, and term of his enlistment, the place or vessel from which he was received on board, his rating, his descriptive list, his age, place of birth, and citizenship, with such remarks as may be necessary.

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2. He shall, before sailing, transmit to the Secretary of the Navy a complete list of the rated men under his command, showing the particulars set forth in rule one, and a list of officers and passengers, showing the date of their entering. And he shall cause similar lists to be made out on the first day of every third month and transmitted to the Secretary of the Navy as opportunities occur, accounting therein for any casualty which may have happened since the last list.

3. He shall cause to be accurately minuted on the ship's books the names of any persons dying or deserting, and the times at which such death or desertion occurs.

4. In case of the death of any officer, man, or passenger on said vessel, he shall take care that the paymaster secures all the property of the deceased, for the benefit of his legal representatives.

5. He shall not receive on board any man transferred from any other vessel or station to him, unless such man is furnished with an account, signed by the captain and paymaster of the vessel or station from which he came, specifying the date of his entry on said vessel or at said station, the period and term of his service, the sums paid him, the balance due him, the quality in which he was rated, and his descriptive list.

6. He shall, whenever officers or men are sent from his ship, for whatever cause, take care that each man is furnished with a complete statement of his account, specifying the date of his enlistment, the period and term of his service, and his descriptive list. Said account shall be signed by the commanding officer and paymaster.

7. He shall cause frequent inspections to be made into the condition of the provisions on his ship, and use every precaution for their preservation.

8. He shall frequently consult with the surgeon in regard to the sanitary condition of his crew, and shall use all proper means to preserve their health. And he shall cause a convenient place to be set apart for sick or disabled men, to which he shall have them removed, with their hammocks and bedding, when the surgeon so advises, and shall direct that some of the crew attend them and keep the place clean.

9. He shall attend in person, or appoint a proper officer to attend, when his crew is finally paid off, to see that justice is done to the men and to the United States in the settlement of the accounts.

10. He shall cause the articles for the government of the Navy to be hung up in some public part of the ship and read once a month to his ship's company.

Every commanding officer who offends against the provisions of this article shall be punished as a court-martial may direct.

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ARTICLE 21.

When the crew of any vessel of the United States are separated from their vessel by means of her wreck, loss, or destruction, all the command and authority given to the officers of such vessel shall remain in full force until such ship's company shall be regularly discharged from or ordered again into service, or until a court-martial or court of inquiry shall be held to inquire into the loss of said vessel. And if any officer or man, after such wreck, loss, or destruction, acts contrary to the discipline of the Navy, he shall be punished as a court-martial may direct.

ARTICLE 22.

All offenses committed by persons belonging to the Navy which are not specified in the foregoing articles shall be punished as a court-martial may direct.

(Act of March 3, 1893 (27 Stat., 716), provides that "Fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared an offense against naval discipline and made punishable by general court-martial, under article twenty-two of the articles for the government of the Navy.")

ARTICLE 23.

All offenses committed by persons belonging to the Navy while on shore shall be punished in the same manner as if they had been committed at sea.

ARTICLE 24.

No commander of a vessel shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest, or confinement shall not continue longer than ten days, unless a further period is necessary to bring the offender to trial by a court-martial; nor shall he inflict, or cause to be inflicted, upon any petty officer, or person of inferior rating, or marine, for a single offense, or at any one time, any other than one of the following punishments, namely:

1. Reduction of any rating established by himself.
2. Confinement, with or without irons, single or double, not exceeding ten days, unless further confinement be necessary in the case of a prisoner to be tried by court-martial.
3. Solitary confinement, on bread and water, not exceeding five days.
4. Solitary confinement not exceeding seven days.
5. Deprivation of liberty on shore.
6. Extra duties.

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No other punishment shall be permitted on board of vessels belonging to the Navy, except by sentence of a general or summary court-martial.[1] All punishments inflicted by the commander, or by his order, except reprimands, shall be fully entered upon the ship's log.

(Act of August 29, 1916, provides that "Hereafter all officers of the Navy and Marine Corps who are authorized to order either general or summary courts-martial * * * shall have the same authority to inflict minor punishments as is conferred by law upon the commander of a naval vessel. * * *

"When a force of marines is embarked on a naval vessel, or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organization of marines shall be the same as though such organization were serving at a navy yard on shore,[2] but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any naval vessel over the vessel under his command and all persons embarked thereon."

Act of May 13, 1908 (35 Stat., 132), provides "That the use of irons, single or double, as a form of punishment in the Navy of the United States is hereby abolished, except for the purposes of safe custody or when part of the sentence imposed by a general court-martial.")

ARTICLE 25.

No officer who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement.

ARTICLE 26.

Summary courts-martial may be ordered upon petty officers and persons of inferior ratings, by the commander of any vessel, or by the commandant of any navy yard, naval station, or marine barracks to which they belong, for the trial of offenses which such officer may deem deserving of greater punishment than such commander or commandant is authorized to inflict, but not sufficient to require trial by a general court-martial.

(Act of August 29, 1916, provides that "Summary courts-martial may be ordered upon enlisted men in the naval service under his command by the commanding officer of any brigade, regiment, or separate or detached battalion, or other separate or detached command, and, when empowered by the Secretary of the Navy, by the

[1] Or Deck Court. See act of February 16, 1909, page 45.

[2] The commanding officer of marines at a navy yard or barracks is clothed with the same authority for the purpose of enforcing discipline among the officers and men under his command as that which rests, for similar purposes, in the commanding officer of a vessel. R–4182 (1).

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commanding officer or officer in charge of any command not specifically mentioned in the foregoing: *Provided*, That when so empowered by the Secretary of the Navy to order summary courts-martial, the commanding officer of a naval hospital or hospital ship shall be empowered to order such courts and deck courts, and inflict the punishments which the commander of a naval vessel is authorized by law to inflict, upon all enlisted men of the naval service attached thereto, whether for duty or as patients.")

ARTICLE 27.

A summary court-martial shall consist of three officers not below the rank of ensign, as members, and of a recorder. The commander of a ship may order any officer under his command to act as such recorder.

ARTICLE 28.

Before proceeding to trial the members of a summary court-martial shall take the following oath or affirmation, which shall be administered by the recorder: "I, A B, do swear (or affirm) that I will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and my own conscience." After which the recorder of the court shall take the following oath or affirmation, which shall be administered by the senior member of the court: "I, A B, do swear (or affirm) that I will keep a true record of the evidence which shall be given before this court and of the proceedings thereof."

ARTICLE 29.

All testimony before a summary court-martial shall be given orally, upon oath or affirmation, administered by the senior member of the court.

(Act of February 16, 1909, section 16 (35 Stat., 622), provides "That the depositions of witnesses may be taken on reasonable notice to the opposite party and, when duly authenticated, may be put in evidence before naval courts, except in capital cases and cases where the punishment may be imprisonment or confinement for more than one year, as follows: First, depositions of civilian witnesses residing outside the State, Territory, or District in which a naval court is ordered to sit; second, depositions of persons in the naval or military service stationed or residing outside the State, Territory, or District in which a naval court is ordered to sit, or who are under orders to go outside of such State, Territory, or District; third, where such naval court is convened on board a vessel of the United States, or at a naval station not within any State, Territory, or District of the United States, the depositions of witnesses may be taken and

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used as herein provided whenever such witnesses reside or are stationed at such a distance from the place where said naval court is ordered to sit, or are about to go to such a distance as, in the judgment of the convening authority, would render it impracticable to secure their personal attendance."

A decision of the Secretary of the Navy (file 26287–833, June 29, 1911) holds:

In article 29 of the Articles for the Government of the Navy, "testimony" must be considered as used in an accurate legal sense, as meaning "that which comes to the tribunal through living witnesses under oath" [Cyclopedia of Law and Procedure (v. 16, p. 849)]; and in enacting this law Congress must be presumed to have understood the legal distinction between the terms ["testimony" and the generic term "evidence"].

The phraseology of article 29, A. G. N., does not forbid expressly or impliedly the production of other evidence than "oral testimony"; it merely provides that all "testimony" shall be given *viva voce* and upon oath or affirmation, thus excluding mere declarations or depositions. [See section 16 of act of February 16, 1909, quoted above, which authorizes the use of depositions in certain cases.] The article in question does not forbid the introduction of other forms of legal evidence, including documentary evidence and real evidence.)

ARTICLE 30.

Summary courts-martial may sentence petty officers and persons of inferior ratings to any one of the following punishments, namely:

1. Discharge from the service with bad-conduct discharge; but the sentence shall not be carried into effect in a foreign country.
2. Solitary confinement, not exceeding thirty days, in irons, single or double, on bread and water, or on diminished rations.
3. Solitary confinement in irons, single or double, not exceeding thirty days.
4. Solitary confinement not exceeding thirty days.
5. Confinement not exceeding two months.
6. Reduction to next inferior rating.
7. Deprivation of liberty on shore on foreign station.
8. Extra police duties, and loss of pay, not to exceed three months, may be added to any of the above-mentioned punishments.

(Act of February 16, 1909, section 8, provides: "That the courts authorized to impose the punishments prescribed by article thirty of the 'Articles for the Government of the Navy' may adjudge either a part or the whole as may be appropriate, of any one of the punishments therein enumerated: *Provided*, That the use of irons, single or double, is hereby abolished except for the purpose of safe custody or when part of a sentence imposed by a general court-martial.")

ARTICLE 31.

A summary court-martial may disrate any rated person for incompetency.

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ARTICLE 32.

No sentence of a summary court-martial shall be carried into execution until the proceedings and sentence have been approved by the officer ordering the court and by the commander-in-chief, or, in his absence, by the senior officer present. And no sentence of such court which involves loss of pay shall be carried into execution until the proceedings and sentence have been approved by the Secretary of the Navy.

(Act of February 16, 1909, section 17, provides "That all sentences of summary courts-martial may be carried into effect upon the approval of the senior officer present, * * *."

Act of August 29, 1916, provides that "No sentence of a summary court-martial shall be carried into execution until the proceedings and sentence have been approved by the officer ordering the court, or his successor in office, and by his immediate superior in command: *Provided*, That if the officer ordering the court, or his successor in office, be the senior officer present, such sentence may be carried into execution upon his approval thereof.")

ARTICLE 33.

The officer ordering a summary court-martial shall have power to remit, in part or altogether, but not to commute, the sentence of the court. And it shall be his duty either to remit any part or the whole of any sentence, the execution of which would, in the opinion of the surgeon or senior medical officer on board, given in writing, produce serious injury to the health of the person sentenced, or to submit the case again, without delay, to the same or to another summary court-martial, which shall have power, upon the testimony already taken, to remit the former punishment and to assign some other of the authorized punishments in the place thereof.

(Act of February 16, 1909, section 9, provides "That the Secretary of the Navy may set aside the proceedings or remit or mitigate in whole or in part, the sentence imposed by any naval court-martial convened by his order or by that of any officer of the Navy or Marine Corps.")

ARTICLE 34.

The proceedings of summary courts shall be conducted with as much conciseness and precision as may be consistent with the ends of justice and under such forms and rules as may be prescribed by the Secretary of the Navy, with the approval of the President, and all such proceedings shall be transmitted in the usual mode to the Navy Department, where they shall be kept on file for a period of two years from date of trial, after which time they may be destroyed in the discretion of the Secretary of the Navy.

(This article was specifically amended as above given by the Act of February 16, 1909, section 14.)

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ARTICLE 35.

Any punishment which a summary court-martial is authorized to inflict may be inflicted by a general court-martial.

ARTICLE 36.

No officer shall be dismissed from the naval service except by the order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof.

ARTICLE 37.

When any officer, dismissed by order of the President since 3d March, 1865, makes, in writing, an application for trial, setting forth, under oath that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial to try such officer on the charges on which he shall have been dismissed. And if such court-martial shall not be convened within six months from the presentation of such application for trial, or if such court, being convened, shall not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void.

ARTICLE 38.

General courts-martial may be convened by the President, the Secretary of the Navy, or the commander-in-chief of a fleet or squadron; but no commander of a fleet or squadron in the waters of the United States shall convene such court without express authority from the President.

(Act of February 16, 1909, section 10, provides "That general courts-martial may be convened by the President, by the Secretary of the Navy, by the commander in chief of a fleet or squadron, and by the commanding officer of any naval station beyond the continental limits of the United States."

Act of August 29, 1916, provides that "When empowered by the Secretary of the Navy, general courts-martial may be convened by the commanding officer of a squadron, of a division, of a flotilla, or of a larger naval force afloat, and of a brigade or larger force of the naval service on shore beyond the continental limits of the United States: *Provided*, That in time of war, if then so empowered by the Secretary of the Navy, general courts-martial may be convened by the commandant of any navy yard or naval station, and by the commanding officer of a brigade or larger force of the Navy or Marine Corps on shore not attached to a navy yard or naval station.")

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ARTICLE 39.

A general court-martial shall consist of not more than thirteen nor less than five commissioned officers as members; and as many officers, not exceeding thirteen, as can be convened without injury to the service, shall be summoned on every such court. But in no case, where it can be avoided without injury to the service, shall more than one-half, exclusive of the president, be junior to the officer to be tried. The senior officer shall always preside and the others shall take place according to their rank.

ARTICLE 40.

The president of the general court-martial shall administer the following oath or affirmation to the judge advocate or person officiating as such:

"I, A B, do swear (*or* affirm) that I will keep a true record of the evidence given to and the proceedings of this court; that I will not divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

This oath or affirmation being duly administered, each member of the court, before proceeding to trial, shall take the following oath or affirmation, which shall be administered by the judge advocate or person officiating as such:

"I, A. B. do swear (*or* affirm) that I will truly try without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the Navy, and my own conscience; that I will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

ARTICLE 41.

An oath or affirmation in the following form shall be administered to all witnesses, before any court-martial, by the president thereof:

"You do solemnly swear (*or* affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (*or*, 'this you do under the pains and penalties of perjury')."

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ARTICLE 42.

Whenever any person refuses to give his evidence or to give it in the manner provided by these articles, or prevaricates, or behaves with contempt to the court, it shall be lawful for the court to imprison him for any time not exceeding two months.

(Act of February 16, 1909, sections 11 and 12, provides "That a naval court-martial or court of inquiry shall have power to issue like process to compel witnesses to appear and testify which United States courts of criminal jurisdiction within the State, Territory, or District where such naval court shall be ordered to sit may lawfully issue.

"That any person duly subpœnaed to appear as a witness before a general court-martial or court of inquiry of the Navy, who willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district attorney, on the certification of the facts to him by such naval court, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five hundred dollars or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That this shall not apply to persons residing beyond the State, Territory, or District in which such naval court is held, and that the fees of such witness and his mileage at the rates provided for witnesses in the United States district court for the State, Territory, or District shall be duly paid or tendered said witness, such amounts to be paid by the Bureau of Supplies and Accounts out of the appropriation for compensation of witnesses: *Provided further*, That no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him.")

(For form of certificate see p. 381.)

ARTICLE 43.

The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than those so furnished shall be urged against him at the trial, unless it shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time absent and can be produced at the trial; in which case reasonable time shall be given to the accused to make his defense against such new charge.

(See note under sec. 42.)

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ARTICLE 44.

Every officer who is arrested for trial shall deliver up his sword to his commanding officer and confine himself to the limits assigned him, on pain of dismissal from the service.

ARTICLE 45.

When the proceedings of any general court-martial have commenced, they shall not be suspended or delayed on account of the absence of any of the members, provided five or more are assembled; but the court is enjoined to sit from day to day, Sundays excepted, until sentence is given, unless temporarily adjourned by the authority which convened it.

ARTICLE 46.

No member of a general court-martial shall, after the proceedings are begun, absent himself therefrom, except in case of sickness, or of an order to go on duty from a superior officer, on pain of being cashiered.

ARTICLE 47.

Whenever any member of a court-martial, from any legal cause, is absent from the court after the commencement of a case, all the witnesses who have been examined during his absence must, when he is ready to resume his seat, be recalled by the court, and the recorded testimony of each witness so examined must be read over to him, and such witness must acknowledge the same to be correct and be subject to such further examination as the said member may require. Without a compliance with this rule, and an entry thereof upon the record, a member who shall have been absent during the examination of a witness shall not be allowed to sit again in that particular case.

ARTICLE 48.

Whenever a court-martial sentences an officer to be suspended, it may suspend his pay and emoluments for the whole or any part of the time of his suspension.

ARTICLE 49.

In no case shall punishment by flogging, or by branding, marking, or tattooing on the body be adjudged by any court-martial or be inflicted upon any person in the Navy.

ARTICLE 50.

No person shall be sentenced by a court-martial to suffer death, except by the concurrence of two-thirds of the members present,

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and in the cases where such punishment is expressly provided in these articles. All other sentences may be determined by a majority of votes.

ARTICLE 51.

It shall be the duty of a court-martial, in all cases of conviction, to adjudge a punishment adequate to the nature of the offense; but the members thereof may recommend the person convicted as deserving of clemency, and state, on the record, their reasons for so doing.

ARTICLE 52.

The judgment of every court-martial shall be authenticated by the signature of the president, and of every member who may be present when said judgment is pronounced, and also of the judge advocate.

ARTICLE 53.

No sentence of a court-martial, extending to the loss of life, or to the dismissal of a commissioned or warrant officer, shall be carried into execution until confirmed by the President. All other sentences of a general court-martial may be carried into execution on confirmation of the commander of the fleet or officer ordering the court.

ARTICLE 54.

Every officer who is authorized to convene a general court-martial shall have power, on revision of its proceedings, to remit or mitigate, but not to commute, the sentence of any such court which he is authorized to approve and confirm.

(See act of February 16, 1909, section 9, quoted under article 33, A. G. N.)

ARTICLE 55.

Courts of inquiry may be ordered by the President, the Secretary of the Navy, or the commander of a fleet or squadron.

(Act of August 29, 1916, provides that "Courts of inquiry may be convened by any officer of the naval service authorized by law to convene general courts-martial.")

ARTICLE 56.

A court of inquiry shall consist of not more than three commissioned officers as members, and of a judge advocate, or person officiating as such.

ARTICLE 57.

Courts of inquiry shall have power to summon witnesses, administer oaths, and punish contempts, in the same manner as courts-

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martial; but they shall only state facts, and shall not give their opinion, unless expressly required so to do in the order for convening.

(See act of February 16, 1909, sections 11 and 12, quoted under article 42, A. G. N.)

ARTICLE 58.

The judge advocate, or person officiating as such, shall administer to the members the following oath or affirmation: "You do swear (*or* affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality." After which the president shall administer to the judge advocate, or person officiating as such, the following oath or affirmation: "You do swear (*or* affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing."

ARTICLE 59.

The party whose conduct shall be the subject of inquiry, or his attorney, shall have the right to cross-examine all the witnesses.

ARTICLE 60.

The proceedings of courts of inquiry shall be authenticated by the signature of the president of the court and of the judge advocate, and shall, in all cases not capital, nor extending to the dismissal of a commissioned or warrant officer, be evidence before a court-martial, provided oral testimony can not be obtained.

(For construction of this article see C. M. O. 46, 1917.)

ARTICLE 61.

No person shall be tried by court-martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or for some other manifest impediment, he shall not have been amenable to justice within that period.

(This article was specifically added by the act of February 25, 1895 (28 Stat., 680).)

ARTICLE 62.

No person shall be tried by court-martial or otherwise punished for desertion in time of peace committed more than two years before the issuing of the order for such trial or punishment, unless he shall meanwhile have absented himself from the United States or by reason of some other manifest impediment shall not have been amenable to justice within that period, in which case the time of his absence shall be excluded in computing the period of the limi-

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tation: *Provided*, That said limitation shall not begin until the end of the term for which said person was enlisted in the service.

(This article was specifically added by the act of February 25, 1895 (28 Stat., 680).

ARTICLE 63.

Whenever, by any of the articles for the government of the Navy of the United States, the punishment on conviction of an offense is left to the discretion of the court-martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.

(See sec. 390.)

(This article was specifically added by the act of February 27, 1895 (28 Stat., 689).)

(*See note, p. 86, as to the construction of "officers" and "superior officers" within the meaning of the Articles for the Government of the Navy.*)

The act of February 16, 1909 (35 Stat., 621), sections 1 to 7, inclusive, provides:

SEC. 1. "That courts for the trial of enlisted men in the Navy and Marine Corps for minor offenses now triable by summary court-martial may be ordered by the commanding officer of a naval vessel, by the commandant of a navy yard or station, by a commanding officer of marines, or by higher naval authority.

(Act of August 29, 1916, provides that "Hereafter all officers of the Navy and Marine Corps who are authorized to order either general or summary courts-martial may order deck courts upon enlisted men under their command, * * *.")

SEC. 2. "That such courts shall be known as 'deck courts,' and shall consist of one commissioned officer only, who, while serving in such capacity, shall have power to administer oaths, to hear and determine cases, and to impose, in whole or in part, the punishments prescribed by article thirty of the Articles for the Government of the Navy:[1] *Provided*, That in no case shall such courts adjudge discharge from the service or adjudge confinement or forfeiture of pay for a longer period than twenty days.

SEC. 3. "That any person in the Navy under command of the officer by whose order a deck court is convened may be detailed to act as recorder thereof.

SEC. 4. "That the officer within whose command a deck court is sitting shall have full power as reviewing authority to remit or mitigate, but not to commute, any sentence imposed by such court; but no

[1] See section 8 of this act, quoted under article 30, A. G. N.

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sentence of a deck court shall be carried into effect until it shall have been so approved or mitigated, and such officer shall have power to pardon any punishment such court may adjudge.[2]

SEC. 5. "That the courts hereby authorized shall be governed in all details of their constitution, powers, and procedure, except as herein provided, by such rules and regulations as the President may prescribe.

SEC. 6. "That the records of the proceedings of the courts hereby authorized shall contain such matters only as are necessary to enable the reviewing authorities to act intelligently thereon, except that if the party accused demands it within thirty days after the decision of the deck court becomes known to him, the entire record or so much as he desires shall be sent to the reviewing authority. Such records, after action thereon by the convening authority, shall be forwarded directly to, and shall be filed in, the office of the Judge Advocate General of the Navy, where they shall be reviewed, and, when necessary, submitted to the Secretary of the Navy for his action.

SEC. 7. "That no person who objects thereto shall be brought to trial before a deck court. Where such objection is made by the person accused, trial shall be ordered by summary or by general court-martial as may be appropriate."

Section 1621 of the Revised Statutes provides that "The Marine Corps shall, at all times, be subject to the laws and regulations established for the government of the Navy, except when detached for service with the Army by order of the President; and when so detached they shall be subject to the rules and articles of war prescribed for the government of the Army."

(By the act of August 29, 1916 (39 Stat., 651), it is provided that "an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws of the government of the naval service prior to his detachment, and for an offense committed against these articles [Articles of War] he may be tried by a naval court-martial after such detachment ceases.")

The act of August 29, 1916, provides that "Officers and enlisted men of the Medical Department of the Navy, serving with a body of marines detached for service with the Army in accordance with the provisions of section sixteen hundred and twenty-one of the Revised Statutes, shall, while so serving, be subject to the rules and articles of war prescribed for the government of the Army in the same manner as the officers and men of the Marine Corps while so serving."

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[2] See section 9 of this act, quoted under article 33, A. G. N.

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IV.

JURISDICTION—DELIVERY OF MEN TO CIVIL AUTHORITIES—HABEAS CORPUS PROCEEDINGS.

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JURISDICTION—DELIVERY OF MEN TO CIVIL AUTHORITIES—HABEAS CORPUS PROCEEDINGS.

20. Jurisdiction of a court.—The jurisdiction of a particular court is the legal power, right, or authority of such court to hear and determine cases legally referred to it and to adjudge sentences within prescribed limitations.

21. Jurisdiction of naval courts-martial.—As naval courts-martial are courts of limited jurisdiction, their records must show affirmatively that they have authority to hear and determine cases coming before them for trial. The jurisdiction of such courts-martial is statutory and is limited to offenses created by the Articles for the Government of the Navy and by other enactments of Congress. The jurisdiction thus conferred is exclusively criminal in character and gives no authority for adjudging damages for personal injuries or private wrongs. It is solely for the purpose of the maintenance of naval discipline. In order that a naval court-martial may conduct a legal trial and adjudge a valid sentence, it is necessary that the jurisdiction of such court be established.

22. Conditions necessary to show jurisdiction.—The following are necessary conditions to the jurisdiction of every naval court-martial:

(*a*) It must be convened by an officer duly empowered to do so.

(*b*) It must be legally constituted; that is, it must be composed of members authorized by statute to sit upon such court.

(*c*) There must be jurisdiction as regards to (1) place, (2) time, (3) person, (4) offense.

As to (*a*) and (*b*), the statutory provisions controlling same are quoted in Chapter III. As to (*c*), considering each in turn:

23. Jurisdiction as to place.—The jurisdiction of naval courts-martial, except where restricted by statute (see art. 6, A. G. N.), extends not only to every part of the United States but also covers all offenses of which it is authorized to take cognizance committed by persons in the Navy, whether within or beyond such territorial limits.

24. Jurisdiction as to time.—As courts-martial do not depend upon a state of war for their jurisdiction, except in the case of a limited number of offenses which pertain solely to a state of war, the jurisdiction of naval courts is restricted in point of time only by the operation of the statutes of limitation. (For the statutes of limitation known to naval procedure see arts. 61 and 62, A. G. N., quoted in Ch. III. In this connection see sec. 297; see also C. M. O. 27, 1913, 13–18.)

25. Jurisdiction as to persons.—The jurisdiction of naval courts-martial includes:

(1) Officers and enlisted men of the regular naval service, including retired officers. (R. S., 1457.) Members of the naval service be-

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come amenable to the jurisdiction of courts-martial upon their entry into such service. Except for the offenses provided for in article 14, A. G. N., this amenability—both as to officers and enlisted men—ceases upon their separation from the service, whether by resignation, dismissal, discharge, or other lawful method of separation. But where proceedings with a view to trial have been instituted before such separation, the naval jurisdiction attaches, and, once attached, continues. A court-martial, having acquired jurisdiction by a proper commencement of proceedings, can not be divested of it by any subsequent change in the status of the accused. (Barrett *v.* Hopkins, 7 Fed., 312; see C. M. O. 26, 1917.)

(2) Midshipmen at the Naval Academy. They are made amenable to trial by general court-martial by statute. (28 Stat., 838.) They are also amenable to trial by special Naval Academy court-martial for the offense of hazing. (See Ch. X.)

(3) Members of the National Naval Volunteers when employed in active service in time of emergency. (Act of Aug. 29, 1916, 39 Stat., 593.)

(4) Members of the Naval Reserve Force (including Marine Corps Reserve) whenever actively employed with the Navy (Marine Corps). (Act of Aug. 29, 1916, 39 Stat., 587.)

(5) Members of the Naval Militia when called into the service of the United States by order of the President. (Act of Feb. 16, 1914, 38 Stat., 284.)

(6) Members of the Coast Guard "whenever, in time of war, the Coast Guard operates as a part of the Navy in accordance with law." (39 Stat., 600.) The law prescribes that the Coast Guard shall operate as a part of the Navy "in time of war or when the President shall so direct." (38 Stat., 800.)

(7) Members of the Public Health Service when serving on Coast Guard vessels in time of war, or detailed in time of war for duty with the Navy. (Act of July 9, 1917.)

(8) Members of the Lighthouse Service when serving with the Navy by order of the President. (Act of Aug. 29, 1916, 39 Stat., 602.)

(9) Members of the Coast and Geodetic Survey Service when serving with the Navy by order of the President. (Act of May 22, 1917.)

(10) De facto enlisted men. A fraudulent enlistment is still an enlistment, and a man so enlisting is de facto in the service and subject to the jurisdiction of a court-martial.

(11) Persons discharged from the Navy, being guilty of certain offenses while in the naval service. (See art. 14, A. G. N.)

(12) Certain civilians in time of war. (See art. 5, A. G. N.)

26. Jurisdiction as to offenses.—As naval courts-martial are courts of statutory jurisdiction, statutory authority must be found for

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offenses chargeable before such courts. Such authority is contained in the Articles for the Government of the Navy (Ch. III), which define specific offenses against naval law and comprehend other offenses by one broad provision (art. 22).

27. Concurrent jurisdiction.—Courts-martial have exclusive jurisdiction to try offenders for acts constituting offenses against naval law only; they also have authority to try offenders for certain acts which, besides constituting offenses against naval law, are also civil crimes of which civil courts may take cognizance. In such cases the same act may be an offense both against naval law and against a State or foreign law if committed within the jurisdiction of a State or foreign government. Therefore, when such offender has been brought to trial in a State or foreign court, he may, nevertheless, thereafter be brought to trial by naval court-martial notwithstanding his conviction and punishment or his acquittal by such civil court, and vice versa. But when an act, prohibited both by naval law and the civil law of the Federal Government, is committed within Federal jurisdiction, and the offender is tried either by a court-martial or a Federal civil court, both of which derive their jurisdiction from the same source—the Federal Government—then the same act constitutes but one offense, namely, an offense against the United States, and trial by either is a bar to trial by the other on the ground of former jeopardy. (*Grafton* v. *United States*, 206 U. S., 333.)

28. Appellate jurisdiction.—When a court-martial is lawfully constituted, has jurisdiction of the person and of the offense of an accused, and the sentence imposed is a legal one, civil courts are without power to review its proceedings. When the proceedings, findings, and sentence in such case have been approved by the proper naval authority, such approval is final and there is no other tribunal to which an appeal can be taken. But when a court-martial is not legally constituted, is without jurisdiction, or adjudges an illegal sentence, its proceedings may be attacked in the proper Federal civil court either by means of a writ of habeas corpus where there is unlawful restraint, or, in the case of illegal dismissal, by bringing suit for pay thereby withheld.

29. Delivery of men to civil authorities.—

(1) *Commanding officer must notify department and await instructions.*—In no case will commanding officers of vessels or shore stations of the Navy or Marine Corps deliver to the civil authorities, State or Federal, any person in their custody or under their control without first communicating with the Secretary of the Navy and awaiting his instructions in the premises. The Secretary of the Navy will promptly issue the necessary orders in the case or make request upon the Attorney General, in accordance with Title VIII of the Revised Statutes of the United States, to furnish such legal

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assistance to the commanding officer concerned as the interests of the United States involved in such case may demand. (See par. 7, below.)

(2) The words "in no case," as used in the above paragraph, are intended to refer to every case in which the civil authorities, Federal or State, request or demand the delivery to them of any officer or enlisted man in the Navy or Marine Corps, whether for the purpose of determining the legality of his detention by the naval authorities, or of trying him for a violation of the Federal or State laws, or of securing the testimony of a naval prisoner as a witness in a civil court. The instructions contained in the above paragraph accordingly apply to and include all cases in which writs of habeas corpus, requisitions of the governor or chief executive of any State, warrants ad testificandum, or other civil process of any kind are served on commanding officers of the Navy or Marine Corps, afloat or ashore, for the purpose of securing the delivery of any person under their control to such civil authorities. (See par. 10, below.)

(3) In such cases occurring outside of the District of Columbia, the report to the Secretary of the Navy will be telegraphic, to be followed immediately by letter containing full statement of the facts. In order to expedite action, the telegraphic report will be addressed to the Secretary of the Navy direct, and the first words in the message will be "For Judge Advocate General."

(4) *Habeas corpus proceedings, Federal courts.*—In this connection there is quoted for the information of the service section 756 of the Revised Statutes of the United States, which prescribes the time allowed for making return to writs of habeas corpus issued by the Federal courts:

"Any person to whom such writ is directed, shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond a distance of a hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days."

(5) The officer upon whom such a writ of habeas corpus is served can not be required to obey same in any shorter period after the service of the writ than that specified in the above section of the Revised Statutes, even though the writ should in terms require that the person named therein be produced "forthwith," or "immediately," or at a specified time. (Ex parte Baez, 177 U. S., 389; United States *v.* Bollman, 24 Fed. Cas., 1190.)

(6) The United States Revised Statutes contain the following further provisions concerning habeas corpus proceedings instituted in the Federal courts:

"SEC. 757. The person to whom the writ is directed shall certify to the court or justice or judge before whom it is returnable the true cause of the detention of such party.

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"SEC. 758. The person making the return shall at the same time bring the body of the party before the judge who granted the writ.

"SEC. 759. When the writ is returned, a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning requests a longer time."

(7) In accordance with the foregoing sections of the Revised Statutes, should instructions for any reason not be received by the commanding officer from the Secretary of the Navy by the last day of the period allowed by law for making return to a writ of habeas corpus issued by a Federal court, the commanding officer will certify to the court or justice or judge before whom the writ is returnable the true cause of the detention of the party, if in his custody, and will at the same time bring the body of the said party before the judge who granted the writ, and request the court to delay the hearing of the cause for the full period of five days allowed by law, so that further opportunity may be afforded for the receipt of instructions in the premises from the Secretary of the Navy. If the party is not in the custody of the officer to whom the writ is directed, he will so state in his return. (As to definition of "custody," see Wales *v.* Whitney, 114 U. S., 564.)

(8) *Habeas corpus proceedings, State courts.*—State courts have no jurisdiction in habeas corpus proceedings to order the discharge of any person held by an officer of the Navy or Marine Corps by authority of the United States; however, in the event that a writ of habeas corpus should be issued by a State court to a commanding officer of the Navy or Marine Corps, afloat or ashore, the Secretary of the Navy will be communicated with immediately in accordance with paragraph three of this order; and should instructions not be received by the commanding officer from the Secretary of the Navy by the time specified in the writ, or if no definite time be specified therein, within three days after the service of the writ (United States *v.* Bollman, 24 Fed. Cas., 1190) the officer upon whom the writ is served will make return thereto in accordance with instructions in section 32, without producing the body of the party in court.

(9) *Delivery of men to State authorities for trial.*—In every case in which the Secretary of the Navy authorizes the delivery of any person in the Navy or Marine Corps to the civil authorities of a State *for trial*, the senior officer present will, before making such delivery, obtain from the governor or other duly authorized officer of such State assurance that the person so delivered will be returned to the naval authorities at the place of his delivery without expense to the United States, immediately upon the completion of his trial for the alleged misconduct which occasioned his delivery to the civil authorities in the event that he is acquitted upon said trial, or immediately upon satisfying the sentence of the court in the event that he is convicted and a sentence imposed, or upon other disposition of his

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case, provided that the naval authorities shall then desire his return. (Instructions of the Secretary of the Navy, Mar. 7, 1908, file 425–2; Apr. 1, 1908, file 2928–8; June 19, 1912, file 26524–45; Feb. 12, 1914, file 26524–57; June 26, 1914, file 26524–61; see also file 26524–64; 1579–03; G. O., No. 18, U. S. M. C., Mar. 29, 1909.) (See par. 12, below.)

(10) The instructions contained in paragraphs 1 and 9 include cases where the delivery of a person in the Navy or Marine Corps attached to a navy yard or station, or serving on board a vessel at such yard or station, is demanded by the civil authorities of the State in which such navy yard or station is located, although such State has expressly retained jurisdiction to serve civil or criminal process within the limits of the navy yard or station in question. (Decision of the Secretary of the Navy, Feb. 12, 1914, file 26524–57.)

(11) *Action where men are convicted by civil authorities.*—In cases in which men delivered to the civil authorities for trial are convicted, the commanding officer will make full report of the offense and sentence to the Bureau of Navigation or the commandant of the Marine Corps, as the case may be, with recommendation as to whether the man should be discharged as undesirable. (File 1579–03, Feb. 14, 1903, and June 11, 1903.)

(12) *Form of agreement as to expenses.*—The following is suggested as a form of agreement acceptable to the department in cases referred to in paragraph 9:

"In consideration of the delivery of _____, United States Navy (or United States Marine Corps), to _____, at _____, for trial upon the charge of _____, I hereby agree, pursuant to the authority vested in me as _____, that said _____ will be returned to the naval authorities at the aforesaid place of his delivery without expense to the United States immediately upon the completion of his trial upon the charge aforesaid in the event that he is acquitted upon said trial, or immediately upon satisfying the sentence of the court in the event that he is convicted and a sentence imposed, or upon other disposition of his case, provided that the naval authorities shall then desire his return."

(The department considers this agreement substantially complied with when the man is furnished transportation back to his station and necessary cash to cover his incidental expenses en route thereto and the Navy Department so informed.)

(13) *Agreement not required of Federal authorities.*—An agreement as to expenses will not be exacted as a condition to the delivery of men to the Federal authorities, either in response to writs of habeas corpus, as witnesses, or for trial. However, in such cases the expenses will be defrayed as follows: The person who produces a man in a Federal court in response to a writ of habeas corpus or as a witness will keep an accurate account of expenses, and present same to the United States marshal for the district in which the court is sitting,

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who is the proper officer to settle such account, including the expenses of the return trip. (File 26251–8684: 2 & 4.) Men desired by the Federal authorities for trial will be called for and taken into custody by a United States marshal or deputy marshal; in such case the expense of transporting the man to the place of trial will, of course, be defrayed by the marshal. The question whether the man in such case may be returned to the Navy at the expense of the United States if not convicted, and if so, what appropriation is available therefor, has not been settled. (See 14 Comp. Dec., 824; 87 S. & A. Memo., 713.)

(14) *Governor's requisition necessary in certain cases.*—In cases in which the delivery of any person in the Navy or Marine Corps for trial is desired by the civil authorities of a State, and such person is not attached to or serving at a navy yard or other place within the limits of said State, requisition for the delivery of the party must be made by the governor or chief executive of such State, addressed to the Secretary of the Navy, showing that the party desired is charged with a crime in that State for which he could be extradited under the Constitution of the United States, the enactments of Congress, and the laws of the State desiring his delivery. (File 26524–61, June 1, 1914; 26524–62, June 22, 1914; 2 Op. Atty. Gen., 10.) Such requisition may be forwarded to the Secretary of the Navy by mail for preliminary examination, together with the appointment of the agent of the State to whom it is desired that delivery be made. Thereupon, if the papers are found to be in due form, the Secretary of the Navy will send the necessary authorization to the designated agent permitting him to take the party into custody upon compliance with paragraph 9, above. (File 26524–64–69–83.)

(15) *Naval prisoners wanted by civil authorities for trial.*—In any case in which the delivery of a person in the Navy or Marine Corps *for trial* is desired by the civil authorities, Federal or State, and such person is a naval prisoner (which includes any person serving sentence of court-martial or in custody awaiting trial by court-martial or disposition of charges against him), he will not in general be delivered to the Federal or State authorities until he has served the sentence of the naval court-martial, or his case has otherwise been finally disposed of by the naval authorities. (File 26251–164, June 4 and Oct. 19, 1908; 26251–5546: 1, Jan. 20, 1912; 26251–6397: 1, Aug. 28, 1912; letter of Attorney General to Secretary of the Navy, Apr. 16, 1907, No. 99858, N. D. file 6674–33; 7538–142, Dec. 3, 1913; 7538–74, Oct. 4, 1909; Army Digest, 1912, 135 D.) However, if the Federal or State authorities desire the surrender of the party under the above circumstances upon a serious charge, such as felonious homicide, and the interests of justice would be better subserved by his delivery, the Secretary of the Navy may, in his discre-

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tion, discharge the man from naval custody and from his contract of enlistment and deliver him to the civil authorities for trial. (File 26251–2798:2, Jan. 24, 1910; Army Digest, 1912, 135 D, 136.)

(16) *Naval prisoners as witnesses or parties in civil courts.*—If the Federal or State authorities desire the attendance of a naval prisoner (see par. 15 above) as a *witness* in a criminal case pending in a civil court, upon the submission of such a request to the Secretary of the Navy authority will be given in a proper case for the production of the man in court without resort being had to a writ of habeas corpus ad testificandum. (File 26251–8684:2, June 10, 1914; 26276–93, May 29, 1914; 26276–40, June 10, 1912; 26276–33, June 5, 1911; 26276–17, Nov. 10, 1909; Army Digest, 1912, 221 a.) The department, however, will not authorize the attendance of a naval prisoner in a Federal or State court, either as a party or as a witness in private litigation pending before such court, as in such cases the court may grant a postponement or a continuance of the trial; but the department will allow the deposition of such naval prisoner to be taken in the case. (File 26251–4913:1, Oct. 12, 1911; 26276–36, Dec. 9, 1911.)

(17) *Men released by civil authorities on bail.*—Where a person in the Navy or Marine Corps is arrested by the Federal or State authorities for trial and returns to his ship or station on bail, the commanding officer may grant him leave of absence to appear for trial on the date set upon an official statement by the judge, prosecuting attorney, or clerk of the court, reciting the facts, giving the date on which the appearance of the man is required, and the approximate length of time that should be covered by such leave of absence. (File 5322, May 23, 1906; 26524–45, June 19, 1912; Army Digest, 137 K.)

(18) *Service of subpœnas—Leave of absence granted—Production of records in court—Preliminary examination of records.*—In cases in which the Federal or State authorities desire to subpœna any person in the Navy or Marine Corps other than a naval prisoner as a witness, the following instructions will govern:

(*a*) Commanding officers afloat or ashore are authorized to permit the service of such process upon the person named therein, but service will not be allowed without such permission of the commanding officer first being obtained. In cases in which service by mail is legally sufficient, the papers may be addressed to the commanding officer with request that they be delivered to the man named therein. (File 6769–21, July 19, 1911; 26524–59, May 1, 1914.)

(*b*) In such cases the commanding officer is authorized to grant leave of absence to the person subpœnaed in order to permit him to obey such subpœna, unless the public interests would be seriously prejudiced by his absence, in which case full report of the matter

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should be made to the department. (File 26276, Apr. 27, 1908, May 19, 1908, June 9, 1908.) This includes cases in which the party is subpœnaed as a witness before a general court martial of a State. (File 7022–3, Oct. 12, 1907.)

(*c*) Officers of the Navy or Marine Corps are prohibited from producing official records or copies thereof in a State court in answer to subpœnas duces tecum, or otherwise, without first obtaining authority therefor from the Secretary of the Navy. (File 26276–26, June 16, 1910; Boske *v.* Comingore, 177 U. S., 460.) In all cases where copies of records are desired by or on behalf of parties to a suit, whether in a Federal or State court, such parties will be informed that it has been the invariable practice of the Navy Department to decline to furnish in the case of legal controversies, at the request of the parties litigant, copies of papers or other information to be used in the course of the proceedings, or to grant permission to such parties or their attorneys to make preliminary or informal examination of the records, but that the department will promptly furnish copies of papers or records in such cases upon call of the court before which the litigation is pending. (File 5467–8, Mar. 27, 1907; 12475–46, July 12, 1913; Boske *v.* Comingore, 177 U. S., 461; file 12475–52:1, Aug. 7, 1914.)

30. Return to writ of habeas corpus by United States court.—The return to a writ of *habeas corpus* issued by a United States court shall be made in accordance with the following form. A copy of the brief of authorities set forth in section 33 shall be filed with the return.

RETURN TO WRIT OF HABEAS CORPUS ISSUED BY A UNITED STATES COURT OR JUDGE.

In the District Court of the United States for the (Eastern) District of (Virginia).

In the matter of A——— F. B———. } Return of respondent.

UPON APPLICATION FOR WRIT OF HABEAS CORPUS.

To the Honorable G——— H. R———, Judge of said Court (*or* To the said Court):

1. Comes now M——— H. C———, captain, U. S. Navy (*or* U. S. Marine Corps), commanding officer of the ———, and by way of return to the writ of habeas corpus issued herein, states, in conformity with the provisions of section 757 of the Revised Statutes of the United States, as follows, to wit:

2. That the said A——— F. B——— enlisted in the United States Navy (*or* in the United States Marine Corps) as ———-on

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the —— day of ———, 19—, at (Boston, Massachusetts), for a term of four years from that date.

3. That the said A——— F. B———, at the time of his enlistment as aforesaid, stated on oath that he was born on the —— day of ———, 1—, thus making him more than eighteen years of age, as will appear from a copy of the enlistment record of said A——— F. B———, hereto attached as a part of this return; that since the enlistment of said A——— F. B——— he has received pay and allowances from time to time thereunder; that on the —— day of ———, 19—, the said A——— F. B——— was detained and recommended for trial by general court-martial for fraudulent enlistment in the United States Navy, in violation of the act of Congress approved March 3, 1893, United States Statutes at Large, volume twenty-seven, page seven hundred and sixteen; and that said action was before the issuing of the writ herein.

4. That the said A——— F. B——— deserted from said United States Navy (*or* United States Marine Corps) at (Boston, Massachusetts), on the —— day of ———, 19—, and remained absent in desertion until he was apprehended at (Norfolk, Virginia), on the —— day of ———, 19—, and was thereupon committed to the custody of the respondent, as commanding officer of the ———; and that the said A——— F. B——— was detained and recommended for trial by general court-martial for said offense of desertion in violation of section 1624 of the Revised Statutes of the United States.

5. That the said A——— F. B——— has been duly arraigned and tried for the said offenses before a general court-martial convened by order of the Secretary of the Navy (and is now held, awaiting the action of the convening authority upon the proceedings and findings of said court) (*or* was convicted thereof by said court and was sentenced to ———, which sentence was approved (*or* was mitigated to ——— and approved) on the —— day of ———, 19—, by the Secretary of the Navy, as required by article 53, section 1624, of the Revised Statutes of the United States. (A copy of the order promulgating said sentence and the action of the Secretary of the Navy thereon is hereto attached).

6. This respondent here produces in court the body of the said A——— F. B———, as commanded by the writ of habeas corpus issued in this matter as aforesaid, but he prays that your honor (*or* this honorable court) will refuse to discharge the said A——— F. B——— and will return and remand him to the custody of this respondent.

Respectfully submitted.

M——— H. C———,
Captain, U. S. Navy, Commanding ———.

———, 19—.

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Var. 1.—If the offense is not fraudulent enlistment by a minor under 18 years of age, omit paragraph 3 above.

Var. 2.—If the offense is fraudulent enlistment by a minor under 18 years of age without desertion, omit paragraph 4 above.

Var. 3.—If the offense is neither fraudulent enlistment by a minor under 18 years of age nor desertion, omit paragraphs 3 and 4 above and substitute an appropriate description of the offense for which the accused is detained, and state whether or not he has been recommended for trial by general court-martial for said offense.

Var. 4.—If the accused has not been tried by general court-martial, omit paragraph 5 above.

(See section 29 (4), (5), (6), (7).

31. If decision is adverse, an appeal shall be noted.—Should the court, Federal or State, render a decision adverse to the United States, the officer making the return, or counsel, should note an appeal pending instructions from the Navy Department, and he shall report to the Judge Advocate General of the Navy immediately the action taken by the court and forward to the Judge Advocate General, direct, a copy of the opinion of the court as soon as it can be obtained.

32. Return to writ of habeas corpus by a State court.—The return to a writ issued by a State court shall be made in accordance with the following form. No copy of the brief set forth in section 33 shall be filed with the return to the writ of habeas corpus issuing from a State court.

RETURN TO WRIT OF HABEAS CORPUS BY A STATE COURT.

In re A——— P. M———, private, U. S. Marine Corps.
Writ of habeas corpus. Return of respondent.

(When the writ issues from a State court, the return is made in the same manner as to a United States court, with the exception of the concluding paragraph, which should be in the following form:)

And the said respondent further makes return that he has not produced the body of the said A——— P. M———, because he holds him by authority of the United States as above set forth, and that this court (*or*, your honor, *as the case may be*) is without jurisdiction in the premises, and he respectfully refers to the decisions of the Supreme Court of the United States in Ableman *v.* Booth (21 Howard, 506), and Tarble's case (13 Wallace, 397), as authority for his action, and prays this court (*or*, your honor) to dimiss the writ.

W——— X. Y———,
Captain, U. S. Navy,
Commanding ————.

(See section 29 (8).)

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33. Brief to be filed with return to a writ of habeas corpus issued by a United States court.—

[I.]

JUDGMENTS OF COURTS MARTIAL ACTING WITHIN THEIR JURISDICTION ARE NOT OPEN TO REVIEW BY CIVIL COURTS.

It is well settled by the authorities that the civil courts have no power to review the proceedings of a legally constituted court martial except for the purpose of determining (*a*) whether such court was acting within its jurisdiction; and (*b*) whether its sentence was in accordance with law, and was duly approved by the proper military authority.

In the leading case of *Dynes* v. *Hoover* (20 How., 55, 82), it was said by Mr. Justice Wayne in delivering the opinion of the court:

> With the sentences of courts-martial which have been convened regularly, and have proceeded legally, and by which punishments are directed, not forbidden by law, or which are according to the laws and customs of the sea, civil courts have nothing to do, nor are they in any way alterable by them. If it were otherwise, the civil courts would virtually administer the rules and articles of war, irrespective of those to whom that duty and obligation has been confided by the laws of the United States, from whose decisions no appeal or jurisdiction of any kind has been given to the civil magistrate or civil courts.

Substantially the same proposition has been affirmed in an unbroken line of authorities as often as the question has been presented. Thus, in *Carter* v. *Roberts* (177 U. S., 496), it was said:

> Courts-martial are lawful tribunals, with authority to finally determine any case over which they have jurisdiction, and their proceedings, when confirmed as provided, are not open to review by the civil tribunals, except for the purpose of ascertaining whether the military court had jurisdiction of the person and subject matter, and whether, though having such jurisdiction, it had exceeded its powers in the sentence pronounced.

The above extract from *Carter* v. *Roberts* was quoted with approval in *Carter* v. *McClaughry* (183 U. S., 401), in which case the court further stated:

> We must not be understood by anything we have said as intending in the slightest degree to impair the salutary rule that the sentences of courts-martial, when affirmed by the military tribunal of last resort, can not be revised by the civil courts save only when void because of an absolute want of power, and not merely voidable because of the defective exercise of power possessed.

Specifically, it has been decided that where the military authorities proceed regularly within their jurisdiction they can not be inter-

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fered with "no matter what errors may be committed in the exercise of their lawful jurisdiction" (*In re McVey*, 23 Fed. Rep., 878).

Again in the case of *Swaim* v. *United States* (28 Ct. Cls., 217, affirmed 165 U. S., 563), it was stated:

> Undoubtedly errors are committed by courts-martial which a civil tribunal would regard as sufficient ground for a reversal for their judgments if it were sitting as an appellate court. But there is always this radical difference between an appellate court sitting for the correction of errors and a civil court into which the record of a court-martial is collateral—in the former there is not a failure of justice; the appellate court may reverse a judgment or prescribe another or award a new trial; in the latter, the court must either give full effect to the sentence or pronounce it wholly void.

That the judgments of courts martial acting within their jurisdiction can not be reviewed by civil courts for errors of procedure, even when such errors are in direct contravention of statutes, see *Ex parte Tucker* (212 Fed. Rep., 569).

The authorities above cited were applied in the case of *Ex parte Dickey* (204 Fed Rep., 322), in which it was held that:

> Where a court-martial had jurisdiction to try petitioner for an offense against the naval regulations and to impose sentence authorized thereby, a civil court in a habeas corpus proceeding could only review the question of jurisdiction, and could not pass on alleged errors of law committed by the court-martial or on the severity of the sentence imposed.

In cases which do not extend to the loss of life or to the dismissal of a commissioned or warrant officer, the Secretary of the Navy is "the final reviewing authority provided by law to act upon records of courts-martial." (*Ex parte Dickey*, 204 Fed. Rep., 322, 326.) Where the court was ordered by the Secretary of the Navy, its sentence can not be carried into effect until confirmed by him (*Dynes* v. *Hoover*, 20 How., 81); where the court was ordered by an officer of the Navy vested with such authority, its sentence may be carried into execution on confirmation by such officer. (Sec. 1624, Revised Statutes, art. 53.) Where the sentence extends to loss of life, or to the dismissal of a commissioned or warrant officer, it can not be carried into execution until confirmed by the President. (Sec. 1624, Revised Statutes, art. 53.) In any of these cases, where the sentence has been so confirmed by the proper reviewing officer, "it becomes final, and must be executed, unless the President pardons the offender. It is in the nature of an appeal to the officer ordering the court, who is made by the law the arbiter of the legality and propriety of the court's sentence. When confirmed, it is altogether beyond the jurisdiction or inquiry of any civil tribunal whatever, unless it shall be in a case in which the court had not jurisdiction over the *subject matter or charge*, or one in which, having jurisdiction over

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the subject matter, it has failed to observe the rules prescribed by the statute for its exercise." (*Dynes* v. *Hoover*, 20 How., 81.) As to the effect of confirmation of the sentence "by the military tribunal of last resort," see also *Carter* v. *McClaughry* (183 U. S., 401) and *Ex parte Dickey* (204 Fed. Rep., 322, 326).

[II.]

SUFFICIENCY OF CHARGES AND SPECIFICATIONS.

In accordance with the established procedure, naval courts-martial, at the outset of a trial, examine the charges and specifications and determine whether or not they are "in due form and technically correct." The decision of the court-martial on this point is not subject to review by a civil court.

"Where a charge against a person tried by a military court is within the court's jurisdiction, and is authorized by the Army or Navy Regulations, the manner of setting out the offense is a matter of pleading, rather than jurisdiction, the sufficiency of which is for the exclusive determination of the court-martial." (*Ex parte Dickey*, 204 Fed. Rep., 322.)

In the case of *Carter* v. *McClaughry* (183 U. S., 355, 400), it was contended that the offense of embezzlement by an officer of the Army was erroneously charged as a violation of article 62, Articles of War (sec. 1342, Revised Statutes), which provides for the punishment of offenses "to the prejudice of good order and military discipline." In overruling this contention, it was stated by the Supreme Court:

> We should suppose that embezzlement would be detrimental to the service within the intent and meaning of the article, but it is enough that it was peculiarly for the court-martial to determine whether the crime charged was "to the prejudice of good order and military discipline." (*Swaim* v. *United States*, 165 U. S., 553; *Smith* v. *Whitney*, 116 U. S., 178; *United States* v. *Fletcher*, 148 U. S., 84.)
>
> In *Swaim* v. *United States*, which involved a sentence under the 62d Article of War, Mr. Justice Shiras, delivering the opinion, said: "But, as the authorities heretofore cited show, this is the very matter that falls within the province of courts-martial, and in respect of which their conclusions can not be controlled or reviewed by the civil courts. As was said in *Smith* v. *Whitney* (116 U. S., 178), 'of questions not depending upon the construction of the statutes, but upon unwritten military law or usage, within the jurisdiction of courts-martial, military or naval officers, from their training and experience in the service, are more competent judges than the courts of common law. * * * Under every system of

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> military law for the government of either land or naval forces, the jurisdiction of courts-martial extends to the trial and punishment of acts of military or naval officers which tend to bring disgrace and reproach upon the service of which they are members, whether those acts are done in the performance of military duties, or in a civil position, or in a social relation, or in private business.'"

Congress has expressly vested naval courts-martial with jurisdiction over "all offenses committed by persons belonging to the Navy," whether at sea or on shore and whether specifically provided for or not. (Sec. 1624, Revised Statutes, arts. 22 and 23.)

[III.]

FRAUDULENT ENLISTMENT.

Where disciplinary proceedings have been commenced against an enlisted man of the Navy on the ground that he has committed an offense cognizable by court-martial, a civil court is not empowered to order his release notwithstanding the fact that his enlistment in the Navy may have been fraudulent.

In the leading case of *In re Grimley* (137 U. S., 147) the petitioner, after conviction of desertion by general court-martial, sought to obtain his release on the ground that his original enlistment in the Army was void because at the time of his enlistment he was over the statutory age. In overruling this contention, the Supreme Court stated:

> It can not be doubted that the civil courts may in any case inquire into the jurisdiction of a court-martial, and if it appears that the party condemned was not amenable to its jurisdiction, may discharge him from the sentence. And, on the other hand, it is equally clear that by *habeas corpus* the civil courts exercise no supervisory or correcting power over the proceedings of a court martial; and that no mere errors in their proceedings are open to consideration. The single inquiry, the test, is jurisdiction. That being established, the *habeas corpus* must be denied and the petitioner remanded. That wanting, it must be sustained and the petitioner discharged. If Grimley was an enlisted soldier he was amenable to the jurisdiction of the court martial; and the principal question, the one ruled against the Government, is whether Grimley's enlistment was void by reason of the fact that he was over 35 years of age.

So also in the case of *In re Morrissey* (137 U. S., 157), where the petitioner enlisted while under the statutory age without the consent of his parents or guardian, and then deserted, the Supreme Court

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held that "he was not only *de facto*, but *de jure*, a soldier—amenable to military jurisdiction"; that "the age at which an infant shall be competent to do any acts or perform any duties, military or civil, depends wholly upon the legislature"; and that the statutory requirement of consent in such cases "is for the benefit of the parent or guardian. It means simply that the Government will not disturb the control of parent or guardian over his or her child without consent. It gives the right to such parent or guardian to invoke the aid of the court and secure the restoration of a minor to his or her control; but it gives no privilege to the minor."

A minor between the ages of 18 and 21 years may be enlisted in the Navy without the consent of his parents or guardian. (*Thomas* v. *Winn*, 122 Fed. Rep., 395; see also *In re Doyle*, 18 Fed. Rep., 369; *In re Norton*, 98 Fed. Rep., 606.) This applies also to enlistments of minors in the Marine Corps, which are governed by the laws relating to the Navy. (See *In re Doyle*, 18 Fed. Rep., 369; and *Elliott* v. *Harris*, 24 App. D. C., 11; overruling *In re Shugrue*, 3 Mackey, 324; and following *United States* v. *Dunn*, 120 U. S., 249.)

Where a minor under the age of 18 years enlists in the Navy or Marine Corps without the consent required by the statute, his release will not be ordered by a civil court, even upon application of his parents or guardian, where disciplinary action has been commenced by the naval authorities, at least until he has answered and satisfied the charges pending against him. (*United States* v. *Reaves*, 126 Fed. Rep., 127; *Dillingham* v. *Booker*, 163 Fed. Rep., 696; 16 Ann. Cas., 127; *Ex parte Rock*, 171 Fed. Rep., 240; see also *Solomon* v. *Davenport*, 87 Fed. Rep., 318; *In re Lessard*, 134 Fed. Rep., 305; *In re Scott*, 144 Fed. Rep., 79.)

By act of March 3, 1893 (27 Stat., 716), it was provided that "fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared an offense against naval discipline and made punishable by general court-martial, under article 22 of the Articles for the Government of the Navy."

[IV.]

CIVIL COURTS CAN NOT ORDER RELEASE OF PERSONS IN THE NAVY UNLESS IN ACTUAL CUSTODY.

The provisions of the Revised Statutes of the United States "contemplate a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." (*Wales* v. *Whitney*, 114 U. S. 574; see also *McGowan* v. *Moody*, 22 App. D. C. 148.)

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In the case of *Wales* v. *Whitney*, it appeared that the petitioner was an officer of the Navy, whose trial by general court-martial had been ordered by the Secretary of the Navy, who had also issued the following order to the petitioner: "You are hereby placed under arrest and you will confine yourself to the limits of the city of Washington." The facts showed that the petitioner was not under "physical restraint;" and, as found by the Supreme Court, the above-mentioned order did not operate to restrain the movements of the petitioner any more than would have been the case had it directed him to remain in Washington to serve as a member of the court-martial. In denying the petitioner's right to a writ of habeas corpus the Supreme Court stated:

> In the case of a man in the military or naval service, where he is, whether as an officer or a private, always more or less subject in his movements, by the very necessity of military rule and subordination, to the orders of his superior officer, it should be made clear that some unusual restraint upon his liberty of personal movement exists to justify the issue of the writ; otherwise every order of the superior officer directing the movements of his subordinate, which necessarily to some extent curtails his freedom of will, may be held to be a restraint of his liberty, and the party so ordered may seek relief from obedience by means of a writ of *habeas corpus*.
>
> Something more than moral restraint is necessary to make a case of habeas corpus. There must be actual confinement or the present means of enforcing it.

The Supreme Court further stated that had the petitioner chosen to disobey the Secretary's order, "he had nothing to do but take the next or any subsequent train from the city and leave it. There was no one at hand to hinder him. And though it is said that a file of marines or some proper officer could have been sent to arrest and bring him back, this could only be done by another order of the Secretary, and would be another arrest, and a real imprisonment under another and distinct order. Here would be a real restraint of liberty, quite different from the first. The fear of this latter proceeding, which may or may not keep Dr. Wales within the limits of the city, is a moral restraint which concerns his own convenience, and in regard to which he exercises his own will."

Var. 1.—In a case where there has not been a trial by general court-martial, omit Parts I and II above.

Var. 2.—In a case in which the validity of the party's enlistment is not questioned, omit Part III above.

Var. 3.—If the party has been tried by court-martial or is in confinement, omit Part IV above.

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V.

PRELIMINARY INVESTIGATION, ARREST AND SUSPENSION, AND CONFINEMENT BEFORE TRIAL.

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PRELIMINARY INVESTIGATION, ARREST AND SUSPENSION, AND CONFINEMENT BEFORE TRIAL.

NOTE.—The following extracts from the Navy Regulations, 1913, are collected in the present chapter by reason of their relation to the administration of naval courts and boards and for the purpose of affording a convenient means of reference thereto. They in no way supersede the articles of the Regulations referred to, and, in the event of future change in any of said articles, the sections of this chapter affected should be changed accordingly.

34. Inquiry into complaints of misconduct.—In order to avoid unnecessary recourse to courts of inquiry and general courts-martial, it is directed that where an officer or other person shall be reported for grave misconduct to his immediate commanding officer, the latter shall institute a careful inquiry into the circumstances on which the complaint is founded. He shall call upon the complainant for a written statement of the case, together with a list of his witnesses, mentioning where they may be found and a memorandum of any documentary evidence bearing upon the case which may be obtainable. R–1404 (1).

35. When accusation is against officer.—Whenever an accusation is made against an officer, either by report or by indorsement upon a communication, a copy of such report or indorsement shall be furnished him at the time. R–1409.

36. An accused person to be given opportunity to reply.—He (the commanding officer of an accused person) shall also call upon the accused for such counter statement or explanation as he may wish to make, and for a list of the persons he desires to have questioned in his behalf. If the accused does not desire to submit a statement, he shall set forth that fact in writing. R–1404 (2).

It is to be noted in connection with the above that a commanding officer can not "legally compel any subordinate under his command to make a statement relative to accusations against such subordinate." (C. M. O. 7, 1914, 15.) Thus, the right of silence or refusal to criminate oneself is accorded to a person whose conduct is the subject of preliminary investigation as well as to a witness or accused at a trial.

37. Minor offenses.—In the infliction of punishment upon enlisted men for lesser offenses, officers who are so authorized should in ordinary cases resort to the authority conferred upon them by the provisions of article 24 of the Articles for the Government of the Navy instead of convening summary courts-martial or deck courts for the trial thereof. The certainty of prompt punishment is more conducive to discipline than punishment deferred long after the offense. R–1404 (3).

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38. Reports and complaints to be temperate in language.—Officers making reports or complaints shall confine themselves exclusively to facts; and statements submitted in reply to or in explanation thereof must be couched in temperate language and relate specifically to the matters referred to therein. Officers to whom such reports or complaints are submitted for statement must not reply by making counter charges. Officers desiring to prefer counter charges against others should make them independently. Opinions must not be expressed nor the motives of others impugned. R–1405.

39. Cases not requiring trial.—If, after the investigation of a report against an officer or other person in the Navy, the commanding officer shall not deem the offense one requiring the action either of a court of inquiry or court-martial, he shall himself take such action as he may think necessary within the limits of punishment allowed him by law. R–1406. (But see in this connection General Order No. 277.)

40. Cases requiring trial.—If, upon such investigation, the commanding officer shall be satisfied that the charge is such as to call for judicial action, he may place the accused under suspension or in confinement, as the case may require, neither of which, however, shall be considered as a punishment. He shall transmit to the Secretary of the Navy, through the Bureau of Navigation, or, in the case of officers or enlisted men of the Marine Corps, through the commandant of the Marine Corps, or to [such superior officer as may be authorized to convene general courts-martial], as the case may require, a letter reporting fully and accurately in detail and in the order of their occurrence the circumstances on which the charge, or charges, may be founded, and when the words constitute the substance of the offense, those used are to be set forth as fully and exactly as possible in the letter. The letter is not in any way to refer to accompanying reports for the circumstances constituting the offense, but is, in itself, to be so circumstantial as to afford a full account of the real nature and extent of the offense charged and of the allegations to which the offender would be held to confess should he plead guilty. R–1407.

41. Charges not to be held back to accumulate.—Offenses shall not be allowed to accumulate in order that sufficient matter may thus be collectively obtained for a trial, without giving due notice to the offender. R–1411.

42. Further proceedings.—Should the Secretary of the Navy, commander in chief, or [other competent superior officer] decide that no trial is to take place, the accused shall be at once released and restored to duty, unless such superior authority otherwise directs. But if it be decided that the accused shall be brought to trial, the court shall be assembled for that purpose as soon as the nature of the case and the interests of the public service will allow, unless meanwhile

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such information or explanation shall reach the convening authority as to render it advisable to withdraw the charges and restore the accused to duty. When a trial has been decided upon the accused shall, as soon as practicable, be furnished with a copy of the charges and specifications and at the same time be placed formally under arrest for trial. R–1408 (1) and (2).

The Articles for the Government of the Navy provide for two arrests—one in an emergency, with a view to a preliminary examination, and the other an arrest for trial. The copy of the charges referred to in the above section and in article 43, A. G. N., is to be furnished the accused at the time of his arrest for trial, and not upon arrest in the first instance. (19 Op. Atty. Gen., 472.)

43. Purpose and time of arrest.—The placing of an officer or enlisted man under arrest to await trial by court-martial is to insure his presence at the trial and to give him a reasonable opportunity to prepare his defense. In general, the accused shall not be placed under arrest until just prior to the trial, except when it may be advisable as a precaution against his escape or to enable him to prepare his defense, or when, owing to the nature of the offense and the character or condition of the accused, his confinement is necessary in the interests of good order and discipline. In all cases of confinement it shall be no more rigorous than the circumstances require. R–1416.

44. Placing an officer under arrest.—An officer, when placed under arrest, either as a punishment or to await further disciplinary action, shall deliver up his sword, through the arresting officer, to the commanding officer of the ship [or other competent authority]. R–1417 (1).

45. Limits of arrest.—He (officer under arrest) shall confine himself to the limits assigned him at the time of his arrest or afterwards, under pain of dismissal from the service. R–1417 (2).

46. Officer under arrest shall not visit commanding officer.—He (officer under arrest) shall not visit his commanding or other superior officer officially unless sent for; but in case of business requiring attention, he shall make it known in writing. R–1417 (3).

47. Officer suspended from duty.—An officer suspended from duty shall confine himself to the limits assigned him at the time of his suspension or afterwards, and his failure to do so shall be regarded as a breach of arrest. R–1418.

48. Confinement or restraint.—An officer placed under arrest or suspension on board ship shall not be confined to his room or restrained from the proper use of any part of the ship to which before his arrest or suspension he had a right, except the quarter-deck, poop, and bridges, unless such confinement or restraint shall be necessary for the safety of the ship or of the officer or for the preservation of good order and discipline; but such confinement shall not be imposed for a longer time than absolutely necessary. Similarly, at a naval station

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or other place on shore, the confinement or restraint imposed shall not be unduly rigorous. R–1419.

49. Officer under arrest or suspension shall not leave State or Territory.—An officer under arrest or suspension shall not leave the State or Territory of which he is a resident, nor visit the Navy Department, without authority from the Secretary of the Navy. R–1526.

50. Officers in arrest can not insist on being tried.—No officer can demand a court-martial on himself, or on any other person, or persist in considering himself under the restraint of arrest after he has been released by proper authority, or refuse to return to duty. R–1421.

51. Confinement of enlisted men awaiting trial.—When an enlisted man is confined for a longer time than 10 days to await trial by court-martial, the commanding officer shall keep in view the fact that his confinement is protracted simply to insure the appearance of the prisoner before the court by which he is to be tried. He should not, therefore, be subjected to greater rigor than is necessary to effect that object. R–1426. (As to the use of irons for this purpose, see act of Feb. 16, 1909, quoted under article 30, A. G. N.)

52. Temporary release of an officer under suspension or arrest.—The commanding officer of a ship or other competent authority may release temporarily and put on duty an officer under suspension or arrest should an emergency of the service or other sufficient cause make such measure necessary. The order for temporary release shall be in writing and shall assign the reasons. Should the officer be under charges, they need not be withdrawn; and such temporary release and restoration to duty shall not be a bar to any subsequent investigation or trial of the case that the convening authority may think proper to order, nor to the investigation of any complaint the accused may make in regard to the suspension or arrest. R–1410.

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VI.

CHARGES AND SPECIFICATIONS.

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CHARGES AND SPECIFICATIONS.

53. Definition.—A *charge*, in naval law, designates an alleged offense in general terms, while the *specification* sets forth the facts constituting the same.

54. Powers of convening authority in framing the charges.—It is entirely within the discretion of the officer empowered to convene a court-martial to direct what portions of the complaint against an accused shall be charged against him. When the competent officer has decided to have a person tried by general court-martial, he shall cause charges and specifications against the offender to be prepared, and transmit a true copy of them, with an order for the arrest or confinement of the accused, to the proper officer, who shall deliver such order to the accused, together with the copy of the charges and specifications, at the same time formally notifying him that he is put under arrest, and if an officer, shall receive his sword. (See sections 41, 48, and 49.)

55. Alterations in the charges and specifications.—After a charge has been signed by the proper authority and ordered to be investigated, it is not competent for any person to make alterations therein without first having obtained the consent of such authority, except that the judge advocate may, with the approval of the court, correct manifest clerical errors. (See section 56.) If a court-martial considers other alterations necessary in a charge or specification laid before it, the same must be submitted for the approval of the authority by whom the original charge was sanctioned previous to the arraignment of the accused. (See p. 370.)

56. Errors in charges and specifications are of three classes.—(1) Clerical errors; (2) technical errors other than clerical; (3) errors in substance.

(1) Clerical errors are those of spelling, punctuation, etc., correction of which does not alter facts. Such errors may, with the approval of the court, be corrected by the judge advocate. Under such circumstances the correction shall be neatly made *in red ink* and initialed, where made, by the judge advocate.

(2) Technical errors are those which the charges and specifications disclose, and which would be sufficient to sustain an objection by the

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accused, such as uncertainty as to the time or place of occurrence of the alleged offense, name of accused misspelled, etc. It is not within the discretion of the judge advocate, the court, or any other party to correct technical errors in the charges and specifications without the consent of the convening authority. If the court is in doubt as to whether an error in the charges and specifications is clerical or technical, it should treat it as a technical error and thus avoid any possibility of having the case disapproved on a technicality of this nature. If the court decides that a charge and specification contains a technical error, it shall communicate immediately with the convening authority.

(3) Errors in substance are those of such a nature as to vitiate the entire proceedings and render them liable to review by civil tribunals, such, for example, as lack of jurisdiction on the part of the court. It is not within the discretion of the judge advocate, the court, or any other party to correct errors in substance occurring in the charges and specifications without the consent of the convening authority. If the court decides that a charge and specification contains an error in substance, it shall communicate immediately with the convening authority.

57. Amendment of defects in charges and specifications.—Should the convening power authorize the judge advocate to amend legal defects in the charges and specifications before the accused is called on to plead, it is to be understood that in so doing the judge advocate is strictly responsible that the facts are not changed or the legal responsibilities weakened. He shall, on every occasion, communicate to the accused any alterations in the charges which were delivered to him at the time of his arrest as soon as possible after such alterations shall have been made.

58. Additional charges.—(See article 43, A. G. N.)

59. Trial in joinder.—Accused persons will not be joined in the same charge and specification unless for concert of action in an offense. When the convening authority does not join the accused in the charges and specifications, but indicates that he desires them tried separately by preferring separate charges and specifications, courts-martial shall not try them in joinder. If the convening authority desires to try men in joinder, he should prefer but one set of charges and specifications, and write but one letter of transmittal.

60. Court not authorized to direct the judge advocate to enter a nolle prosequi.—A *nolle prosequi* (or withdrawal or discontinuance) is "an entry made on the record by which the prosecutor or plaintiff declares that he will proceed no further." (2 Bouvier, 503.) After charges have been formally referred by competent authority to a

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court-martial for trial the court is not authorized, at its discretion and upon its own motion, to strike out a charge or specification, or to direct or permit the judge advocate to drop or withdraw such charge or specification, or to enter a *nolle prosequi* as to the same. For such action the authority of the convening officer is necessary. (C. M. O. 42, 1914, 6.) See p. 371.

61. Duplication of charges.—The law permits as many charges to be preferred as are necessary to provide for every possible contingency in the evidence. Where the offense falls apparently equally within the scope of two or more articles of the Articles for the Government of the Navy, or where the legal character of the offense can not be precisely known or defined until developed by the proof, it is quite proper in important cases to specify the offense under two or more charges. There is no rule of law that prohibits the formulation of the same charge under more than one article. (C. M. O. 42, 1914, 7.)

However, as a matter of policy and not as a matter of law, the use in naval practice of two or more charges is not approved where the identical facts are made the basis of both and where there are no aggravating circumstances set forth under one charge which distinguish it from the other. (See C. M. O. 45, 1916.) But, on the other hand, if a man in absenting himself without leave also commits another offense in connection therewith which is not covered by the charge of absence without leave or other specified charge, then he might properly be charged also with conduct to the prejudice of good order and discipline, or as the case may be, the specification thereunder indicating the distinguishing nature of the offense. An example of such a case would be when a man absents himself without leave and remains absent in order to avoid an evolution as coaling ship, landing force, etc. The offense of evading the coaling ship, landing force, etc., might properly be covered by the charge of conduct to the prejudice of good order and discipline. (C. M. O. 5, 1914, 7.)

62. Offense charged by statement of material facts.—An offense is charged by the statement of the material facts which constitute it, and not by the statement of a mere conclusion of law. Thus, if it is desired to charge a man with having committed the crime of theft, the specification should set forth the acts upon which the charge is based and not merely allege that theft was committed by such man at a certain time and place. (To this well-recognized rule there are what might be considered as exceptions in the cases of certain charges such as "desertion" and "assault." For example, in the specification of a desertion charge it is alleged that an accused has "deserted" and not, as would seem proper, that he "was absent without authority with intention permanently to abandon the naval

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service." This can only be explained on the historical ground that such terms as "desertion" and "assault" have grown to be considered as descriptive of acts rather than expressive of conclusions.) However, the insertion of a conclusion of law in a specification, where desired for the sake of particularity, is permissible, but such conclusion adds nothing to the complaint, which rests upon the statement of facts. Thus, while it is customary in drawing up specifications on the charge of neglect of duty and similar charges to allege that the accused "did therein and thereby neglect his duty," etc., yet the statement of such conclusion, although desirable for the sake of particularity, is not essential to the specification. (See C. M. O. 4, 1914.)

63. Facts alleged in a specification must constitute an offense of which cognizance can be taken.—A specification must, on its face, allege facts which constitute a violation of some law, regulation, or custom of the service in order to charge an offense of which judicial notice can be taken. For example, it has been held that a specification, which merely alleged that an accused enlisted man made a statement in inelegant language expressing what would be his opinion of another enlisted man under certain conditions, was defective in that it charged no offense of which a court could take cognizance. In order that cognizance may be taken of an offense not in violation of a law, general regulation, or well-known custom of the service, such offense must be alleged with particularity. Thus, if it is desired to charge a violation of a special order local to some particular ship or station, the specification should show that the facts constituted a violation of such special order. (See C. M. O. 33, 1914, 6–7.)

64. Charges and specifications to be succinct.—In drawing up the charges and specifications, all extraneous matter is to be carefully avoided, and nothing shall be alleged but that which is culpable and which the prosecution is prepared to substantiate before a court-martial.

65. Different offenses the subject of distinct charge and specification.—Offenses of a perfectly distinct nature must not be included in one and the same charge and specification of a charge, but each offense of a different kind shall be made the subject of a distinct charge and specification. Different offenses of the same kind, however, should be alleged in separate specifications under one charge.

66. Not necessary to refer to statute or article.—It is not necessary to specify in a charge that an offense was committed in breach of any particular statute, article of the Articles for the Government of the Navy, or general regulation, but whenever the allegation comes directly under any enactment or regulation, it shall be set forth in the terms used therein. (See sec. 110.)

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67. Offenses not specifically provided for, how charged.—When an offense is a neglect or disorder not specially provided for, it shall be charged as "scandalous conduct tending to the destruction of good morals," or "conduct to the prejudice of good order and discipline." But when the offense is one specifically provided for it is properly chargeable under the specific charge, and not under a general charge. See section 61.

68. Certain abbreviations authorized.—Dates and time may be expressed in figures. The following abbreviations are authorized: "U. S. S." for "United States Ship;" "U. S. Navy" for "United States Navy;" "U. S. Marine Corps" for "United States Marine Corps;" "U. S. Army" for "United States Army;" "a. m." and "p. m." for "antemeridian" and "postmeridian," respectively; Christian names other than the first may be indicated by initial letters.

12.30 a. m. and 12.30 p. m. shall be used to indicate 30 minutes after midnight and 30 minutes after meridian, respectively. The expression "30 minutes a. m." is ambiguous, and shall not be used.

Sums of money mentioned in specifications should be set out in both words and figures.

Except as indicated in this section, the use of figures or abbreviations in charges or specifications is prohibited.

69. Intent should be expressed by technical word prescribed.—In cases where the law has adopted certain expressions to show the intent with which an offense is committed, the intent shall be expressed by the technical word prescribed, as "wilfully," "knowingly," "corruptly," "maliciously," "intentionally," "wrongfully." Certain of the foregoing words appear in the Articles for the Government of the Navy and should be used to express fully the offense charged. For example, a charge made against an officer for making or for signing a false muster must be laid to have been done "knowingly." Where the offense charged is that of unlawfully having intoxicants, drugs, or property of another in possession, it is essential to specify that the possession was "unlawful."

70. Where higher criminality attaches to acts under particular circumstances.—In all cases in which the law attaches higher criminality to acts committed under particular circumstances, the act must, to bring the person within the higher degree of punishment, be charged to have been committed under those circumstances, which must be stated with certainty and precision. For instance, the limitations of punishment permit of a higher degree of punishment for desertion "in case of apprehension or delivery to naval authorities" than "in case of surrender to naval authorities." If, therefore, it is desired to bring an offender within the higher degree, the "apprehension or delivery to naval authorities" must be alleged.

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71. The specifications of each charge, one or more, must be brief, clear, and explicit.—The facts, circumstances, and intent constituting the offense must be set forth with certainty and precision and the accused charged directly and positively with having committed it. Each specification of a charge must set forth facts sufficient to constitute the particular offense charged.

72. Certainty as to the party accused.—The accused must be described by his title and rank, or rating, Christian name and surname, written at full length, with the addition of his vessel or service at the time the offense with which he is charged took place.

73. Allegations as to time and place.—The time and place of the commission of the offense charged must be averred in the specification. They must be stated with sufficient precision to clearly identify the offense and enable the accused to understand what particular act or omission he is called upon to defend. For this purpose, save in cases where time or place is of the essence, a reasonably exact allegation of the time and place is sufficient, the degree of exactness required being that necessary to insure the identification of a particular offense. It is, therefore, proper pleading to allege in a specification that a certain offense occurred "on or about" a certain day "at or near" a certain place, or, if necessary to be more explicit as to the time, "at or about" a certain hour. There is no definite construction which can be placed upon the phrases "on or about," etc., as used in the allegations as to time and place in a specification, but these phrases must be construed reasonably by a court in the light of the circumstances of each particular case. This latitude, however, is not allowed in cases where time or place are of the essence. If, for example, an enlisted man is charged with the offense of absenting himself without authority from his ship on a day on which the "all hands" evolution of coaling ship was performed in support of a charge of conduct to the prejudice of good order and discipline, then time is of the essence of the offense charged and a variation between the date on which the unauthorized absence is alleged and the date on which the "all hands" evolution was performed would make the specification defective.

When the geographical location of a ship is not material to a complete description of an offense, such as theft of another's clothing or any other act committed wholly on board, such geographical location need not be alleged in the specification. An exception to this, however, is to be noted in the charge of murder, the specification of which charge must specify the location of a ship on board which this crime has been committed at the time of its commission in order that the trial and punishment of this offense may come within the provisions of article 6 of the Articles for the Government of the

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Navy, giving a court-martial jurisdiction over this offense only when committed without the territorial limits of the United States.

74. Certainty as to the person against whom the offense was committed.—In the case of offenses against the person or property of individuals, the Christian name and surname, with the rank and station or duty of such person, if he have any, must be stated at length, if known. If not known, the party injured must be described as a "person unknown."

75. Certainty as to facts, circumstances, and intent.—It is not sufficient that the accused be charged generally with having committed an offense, as, for instance, with habitual violation of orders or neglect of duty, but the particular acts or circumstances constituting a specific offense must be distinctly set forth in the specification. Where intent is an ingredient of the offense, it also must be set forth with certainty.

76. Written instruments set out verbatim.—Written instruments, or such portions thereof as form part of the gist of the offenses charged, must be set out verbatim with care and accuracy.

77. When only the substance of written instruments is set out.—When only the substance is intended to be set out, it should be introduced by the words "in substance as follows." The word "tenor" implies that a correct copy is set out.

78. Particular words, how set out.—Where particular words form the gist of the offense, they must be set forth with particularity or declared to be of like meaning and purport. In cases where objectionable language forms the gist of the offense the objectionable language must be alleged.

79. What is to be set forth in case of perjury.—"In prosecutions for perjury committed on examination before a naval general court-martial, or for subornation thereof, it shall be sufficient to set forth the offense charged on the defendant, without setting forth the authority by which the court was held, or the particular matters brought before, or intended to be brought before, said court." (R. S., 1023.) It is to be noted that the above statute, which is one regulating procedure only, prescribes only for "perjury committed on examination before a naval general court-martial." A substantive statute (35 Stat., 1111) defines this offense as being capable of commission by anyone "having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered." (In this connection see C. M. O. 51, 1914, 9, in which it was held that false testimony under oath before a court of inquiry would sustain a charge of perjury.) If, therefore, the charge of this offense is founded on false testimony given before other than a naval general court-martial, then

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section 1023 of the Revised Statutes does not apply, and both the authority on which the proceedings before which the alleged false testimony has been given is based and the subject matter of such proceedings must be set forth. The specification must also, in any event, include direct and specific allegations negativing the truth of the alleged false testimony, together with affirmative averments setting up the truth by way of antithesis.

80. Theft.—In drawing up a specification to support the charge of theft, care should be taken to state, at least approximately, the value of the articles alleged to have been stolen, as the degree of punishment permitted by the prescribed limitations varies in accordance therewith.

81. Incompetency.—When incompetency is alleged, it is essential to set forth the particular acts or neglects upon which the specification is based. In bringing an enlisted man to trial for incompetency before a summary court-martial it is necessary that more than one instance of such incompetency be alleged.

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Specimen Charges and Specifications.

Note.—In time of war add at the end of each specification, or at such other part thereof as may be appropriate, the averment, "the United States then being in a state of war."

Charge.—Absence from Command without Leave.

Specification.—In that Commander ——— ———, U. S. Navy, being in command of the U. S. S. ———, then in the port of ———, ———, did, on or about March 15, 1915, absent himself from said command without leave, and did remain so absent for a period of about three days.

Charge.—Absence from Station and Duty after Leave Had Expired.

Specification.—In that Assistant Surgeon ——— ———, U. S. Navy, having been granted leave of absence from his station and duty on board the U. S. S. ———, at ———, ———, to which ship he had been regularly assigned, said leave to expire on March 15, 1915, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent therefrom, without leave from proper authority, for a period of about twenty-four hours.

Specification.—In that ——— ———, seaman, U. S. Navy, having been granted leave of absence from his station and duty on board the U. S. S. ———, at the navy yard, ———,———, to which ship he had been regularly assigned, said leave to expire on July 21, 1915, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent therefrom, without leave from proper authority, for a period of about six days, at the expiration of which he surrendered himself on board the aforesaid ship.

Specification.—In that ——— ———, musician second class, U. S. Navy, having, while a general court-martial probationer, been granted leave of absence from his station and duty on board the U. S. S. ———, at ———, ———, to which ship he had been regularly assigned, said leave to expire on March 22, 1915, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. Navy, without leave from proper authority, for a period of about four days, at the expiration of which he surrendered himself at the navy yard, Washington, District of Columbia.

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Specification.—In that ——— ———, private, U. S. Marine Corps, having, while a patient at the United States Naval Hospital, Philadelphia, Pennsylvania, been granted leave of absence from his station and duty at said hospital, to which he had been regularly assigned, said leave to expire on March 15, 1915, did fail to return to his station and duty as aforesaid at the expiration of said leave, and did remain absent from the U. S. Marine Corps, without leave from proper authority, for a period of about seven days, at the expiration of which he surrendered himself on board the U. S. S. ———, at ———, ———.

Charge.—Absence from Station and Duty Without Leave.

Specification.—In that ——— ———, fireman second class, U. S. Navy, did, on or about September 20, 1915, without leave from proper authority, absent himself from his station and duty on board the U. S. S. ———, at ———, ———, to which ship he had been regularly assigned, and did remain so absent therefrom for a period of about six days, at the expiration of which he surrendered himself on board said ship.

Specification.—In that ——— ———, fireman third class, U. S. Navy, did, at about 7.00 p. m., September 23, 1916, while a summary court-martial probationer, without leave from proper authority, absent himself from his station and duty on board the U. S. S. ———, at ———, ———, to which ship he had been regularly assigned, and did remain so absent therefrom for a period of about five hours, at the expiration of which he surrendered himself on board said ship.

Specification.—In that ——— ———, private, U. S. Marine Corps, did, on or about April 16, 1915, without leave from proper authority, while enroute from the U. S. Marine Corps recruiting station at ———, ———, to the United States marine barracks at the navy yard, ———, ———, to which barracks he had been regularly assigned, absent himself from the U. S. Marine Corps, and did remain so absent from the U. S. Marine Corps and from his station and duty at the aforesaid barracks until he surrendered himself at the said barracks on or about April 22, 1915.

Charge.—Aiding and Enticing Another to Desert.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving on board the U. S. S. ———, then at anchor in the harbor of ———, ———, did, on January 19, 1913, in order to persuade ——— ———, seaman, U. S. Navy, to join him, the said ———, in an attempt to desert from said ship and from the United States naval service, offer the said ——— the sum of ten dollars ($10), lawful money of the United States, and did, on the date aforesaid, assist

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the said ——— in deserting from the ship aforesaid and from the U. S. Navy by arranging for and causing the appearance, at about 11.00 p. m. on said date, of a small shore boat under gunport number six of said ship, in which boat the said ———, without permission from lawful authority, took passage ashore.

Charge.—ASSAULT.

(*Definition.*—"*An unlawful offer or attempt with force or violence to do a corporeal hurt to another.*"—*Bouvier.*)

Specification.—In that Carpenter ——— ———, U. S. Navy, serving on board the U. S. S. ———, at the navy yard, ———, ———, did, on or about June 23, 1915, at said navy yard, wilfully, maliciously, and without justifiable cause, assault Lieutenant ——— ———, U. S. Navy, also serving on board said ship.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, at the navy yard, ———, ———, did, on or about June 5, 1913, on a public street car in the city of———, wilfully, maliciously, and without justifiable cause, assault ——— ———, a civilian passenger on the aforesaid car.

Charge.—ASSAULTING AND ATTEMPTING TO KILL ANOTHER PERSON IN THE SERVICE.

Specification.—In that ——— ———, private, U. S. Marine Corps, did, on or about December 7, 1915, in the navy yard, ———, ———, while serving at the marine barracks at said navy yard, wilfully, maliciously, and without justifiable cause, assault and shoot with a loaded revolver and thereby attempt to kill ——— ———, corporal, U. S. Marine Corps, serving at said barracks.

Charge.—ASSAULTING AND STRIKING ANOTHER PERSON IN THE NAVY.

Specification.—In that ——— ———, fireman first class, U. S. Navy, serving on board the U. S. S. ———, then at the navy yard, ———, ———, did, on or about June 28, 1915, in the city of ———, ———, wilfully, maliciously, and without justifiable cause, assault and strike ——— ———, seaman, U. S. Navy, attached to said ship.

Charge.—ASSAULTING AND STRIKING ANOTHER PERSON IN THE SERVICE.

Specification.—In that ——— ———, private, U. S. Marine Corps, a general court-martial prisoner at the naval prison, navy yard, ———, ———, did, on February 16, 1915, at the said naval prison, wilfully, maliciously, and without justifiable cause, assault and strike

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——— ———, private, U. S. Marine Corps, a prisoner at said prison.

Charge.—Assaulting and Striking His Superior Officer.

(*Note.—Within the meaning of the Articles for the Government of the Navy, unless there be something in the context or subject matter repugnant to or inconsistent with such construction, officers shall mean commissioned and warrant officers; superior officers shall be held to include mates and petty officers of the Navy and noncommissioned officers of the Marine Corps, in addition to the officers enumerated. See, in this connection, C. M. O. 5, 1917, 9.*)

Specification.—In that ——— ———, fireman first class, U. S. Navy, serving on board the U. S. S. ———, at the navy yard, ———, ———, did, on or about March 7, 1915, in the city of ———, ———, wilfully, maliciously, and without justifiable cause, assault and strike his superior officer, Lieutenant ——— ———, U. S. Navy, serving on board said ship.

Charge.—Assaulting and Striking His Superior Officer While in the Execution of the Duties of His Office.

Specification.—In that Lieutenant (junior grade) ——— ———, U. S. Navy, serving on board the U. S. S. ———, did, on or about April 5, 1915, in the wardroom of said ship, when ordered by Commander ——— ———, U. S. Navy, the executive officer of said ship, to get into a proper uniform, wilfully, maliciously, and without justifiable cause, assault and strike the said Commander ——— ———, who was then and there in the execution of the duties of his office.

Specification.—In that ——— ———, seaman, U. S. Navy, a general court-martial prisoner undergoing confinement at the United States naval prison, navy yard, ———, ———, did, on or about June 30, 1915, at said prison, wilfully, maliciously, and without justifiable cause, assault and strike ——— ———, corporal, U. S. Marine Corps, who, in the execution of his duties as corporal of the guard at said prison, was then and there inspecting the cells of prisoners undergoing solitary confinement.

Charge.—Assaulting and Striking a Sentinel.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, did, on February 2, 1911, in the vicinity of the brig of the said ship ———, wilfully, maliciously, and without justifiable cause, assault and strike ——— ———, private, U. S. Marine Corps, who was then and there regularly on duty as a sentinel on post at said brig.

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Charge.—Assaulting With a Deadly Weapon and Wounding Another Person in the Navy.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, at Honolulu, Territory of Hawaii, did, on July 4, 1915, in the Park Saloon in said city, wilfully, maliciously, and without justifiable cause, assault and stab with a knife or other sharp instrument and thereby wound ——— ———, seaman, U. S. Navy, serving on board said ship.

Charge.—Assault With Intent to Commit Rape.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on or about March 9, 1914, at the said navy yard, feloniously, forcibly, and against her will, assault one ——— ———, with intent to commit the crime of rape upon her, the said ——— ———.

Charge.—Attempting to Desert.

Specification.—In that ——— ———, seaman, second class, U. S. Navy, serving on board the U. S. S. ———, at ———, ———, did, on or about October 18, 1916, endeavor to leave said ship by attempting to jump overboard therefrom with intent to desert from said ship and from the U. S. Navy.

Charge.—Attempting to Suborn Testimony to be Given Before a Court-Martial.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving on board the U. S. S. ———, did, on or about March 12, 1909, on board the said ship ———, by offer of money, wilfully and with corrupt intent, incite and endeavor to persuade one ——— ———, seaman, U. S. Navy, stationed on the said ship, ———, to appear in the trial by summary court-martial of the said ——— ———, and then and there, upon oath, to give false testimony at said trial.

Charge.—Breaking Arrest.

Specification.—In that ——— ———, quartermaster third class, U. S. Navy, serving on board the U. S. S. ———, at the navy yard, ———, ———, did, on or about August 25, 1915, while a prisoner at large on board said ship by lawful order of his commanding officer, Chief Boatswain ——— ———, U. S. Navy, break his arrest and leave the aforesaid ship at the aforesaid place.

Specification.—In that ——— ———, private, U. S. Marine Corps, while being held at the United States marine barracks, Washington, District of Columbia, as a straggler from the U. S. S. ———, to which ship he had been regularly assigned, having been placed under

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the charge of a sentry at said barracks, by lawful order of the commanding officer thereof, did, on or about September 4, 1915, break his arrest and leave said barracks.

Charge.—CAUSING TO BE PRESENTED TO A PERSON IN THE NAVAL SERVICE FOR APPROVAL AND PAYMENT A CLAIM AGAINST THE UNITED STATES KNOWING SAID CLAIM TO BE FALSE AND FRAUDULENT.

Specification.—In that Naval Constructor ——— ———, U. S. Navy, being, on or about February 1, 1915, and continuously thereafter until the date hereof, on duty at the navy yard, ———, ———, as the head of the department of ——— at said yard, and it being part of his duty as such head of department to supervise and control all work pertaining to said department and to have general superintendence, charge, and direction of all persons employed in said department, and it being also a part of his duty to direct the preparation of and to examine, and, if found correct, to approve, the pay rolls of said department prior to their submission to the commandant of said navy yard for approval and transmission to the pay officer at said navy yard, did cause to be prepared a semimonthly pay roll of persons employed in said department of ———, navy yard, ———, ———, for the period from March 16, 1915, to March 31, 1915, inclusive, and did, on or about April 10, 1915, in his official capacity as head of said department, approve said pay roll and cause it to be presented to and approved by the commandant and transmitted to the pay officer of the said navy yard, and the amounts therein set forth, respectively, were paid to the persons whose names appeared thereon; whereas, as he, the said ——— ———, well knew, the said pay roll contained the names of a number of laborers and mechanics, to wit, four hundred and forty-nine, who, for work performed during the last six days of March, between 7.00 a. m. and meridian, and between 12.30 p. m. and 6.30 p. m., were credited, in making up the time and amounts specified on said pay roll, with having rendered one and five-eighths days', that is to say, thirteen hours', service, when, in fact, they had thus rendered and were entitled to be credited with one and three-eighths days', that is to say, eleven hours' service per day only, in consequence of which false entries on said pay rolls, overpayments to laborers and mechanics employed in the department of ——— at said navy yard, for the period named, were made, amounting to about one thousand four hundred twenty-nine dollars and thirty-three cents ($1,429.33); and the said ——— ———, did therein and thereby, cause to be presented to a person in the naval service for approval and payment a claim against the United States, knowing such claim to be false and fraudulent.

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Charge.—CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE.

(*See* sections 61, 67.)

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, at the navy yard, ———, ———, did, on February 2, 1915, upon returning to said ship from liberty, unlawfully have in his possession a flask containing intoxicating liquor.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, did, on or about February 19, 1915, on board said ship, referring to ——— ———, chief boatswain's mate, U. S. Navy, attached to said ship, say, in the presence of one or more other enlisted men of the Navy, "We'll get ——— yet and make him pay for what he has done," or words to that effect, meaning that he would compromise or otherwise injure the said ——— in retaliation for an act or acts performed by the said ——— in the execution of the duties of his office.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on August 30, 1915, attempt to smuggle into said navy yard two bottles containing intoxicating liquor.

Specification.—In that ——— ———, electrician second class, U. S. Navy, serving on board the U. S. S. ———, did, on or about October 21, 1915. on board said ship, unlawfully have cocaine in his possession.

Specification.—In that Lieutenant ——— ———, U. S. Navy, serving on board the U. S. S. ———, was, on or about September 1, 1915, on board said ship, from previous indulgence in intoxicating liquors, incapacitated for a proper performance of his duties to such an extent as to necessitate his being placed on the sick list.

Specification.—In that ——— ———, baker second class, U. S. Navy, then serving on board the U. S. S. ———, at ———, ———, did, on or about June 27, 1915, write and cause to be delivered to ——— ———, a chief yeoman in the U. S. Navy, serving at the United States Naval Training Station, ———, ———, a letter in the words and figures following, to wit:

"BOSTON, MASS., *June 27, 1915.*

"DEAR SHIPMATE: Having plenty of leisure this evening, allow me to drop you a few lines, asking you for a great favor. Now, you see, I have my family living at ———, a few miles south of the training station, and I want to get back to that station some way. Could you find out when the next vacancy occurs at that station in the commissary department, as I hear there will be a 2nd class baker leaving for sea soon, and I promise you $10.00 if you work it for me to get back there some way? Something in it, and if I put in my request next month for ———. kindly keep your eyes open.

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"Trusting you will take the matter under consideration for me if you please, and believe me there is something in it if it is approved of. Awaiting your replies,

"Yours, very truly,

"———— ————,

"*U. S. S.* ————."

which said letter was written and sent as aforesaid with the intent and purpose, on the part of the said ————, of bribing the said ———— to aid in effecting the transfer of the said ———— from his station and duty on board the said ship ———— to duty at the aforesaid training station.

Specification.—In that Captain ———— ————, U. S. Navy, commanding the U. S. S. ————, at ————, ————, having, on March 22, 1915, had referred to him by the Bureau of Navigation, Navy Department, a copy of a letter which had been received by said bureau from Captain ———— ————, U. S. Navy, commandant of the naval station, ————, ————, in the words and figures following, to wit: * * *, and having been called upon by said bureau for an explanation of the facts mentioned in the letter above set forth, did, on March 26, 1915, write, send, and publish, or cause to be sent and published to the commandant of said naval station and to the Navy Department a letter, in the words and figures following: * * *, which said letter contains in the third paragraph thereof statements which are wholly irregular, unofficerlike, and prejudicial to good order and discipline.

Specification.—In that ———— ————, seaman, U. S. Navy, serving on board the U. S. S. ————, at ————, ————, well knowing that the said ship ———— was to sail for southern waters on or about August 20, 1914, did fail to return to said ship upon expiration of leave of absence on said date, as it was his duty to do, and did deliberately and wilfully remain absent from said ship until after she had sailed for southern waters in order to avoid duty on board said ship ————.

Specification.—In that ———— ————, seaman, U. S. Navy, having, on or about August 23, 1913, while serving on board the U. S. S. ————, at Shanghai, China, signed an agreement, on board said ship, in tenor as follows, to wit:

"*N. Nav. 59.*

"To the CHIEF OF THE BUREAU OF NAVIGATION,

"*Navy Department, Washington, D. C.*

"I, ———— ————, serving as seaman in the U. S. Navy, request to be discharged on board of the U. S. S. ————, as soon as practicable.

"If this is granted, I further request to be discharged in whatever port I may be on the expiration of my enlistment, and hereby waive

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all claim to transportation at Government expense to the Atlantic and Pacific coasts of the United States and all consular aid, and agree to reenlist on board of the ——— on the day succeeding my discharge.

"My current enlistment expired August 3, 1913.

"(Signed) ——— ———,
"*Seaman, U. S. Navy.*
"*C. S. C.* ———.

"Witness:
"(Signed) ——— ———,
Lieutenant Commander, U. S. Navy.

"U. S. S. ———,
"*Shanghai, China.*
"AUGUST 23, 1913.

"NB–0297,"

and having, on August 27, 1913, been given a discharge from the U. S. Navy which was conditional upon his reenlisting on the succeeding day, as aforesaid, did, on the day succeeding said discharge, namely, August 28, 1913, notwithstanding such agreement on his part and in violation thereof, knowingly and wilfully neglect and fail to reenlist on board the said ship ———.

Specification.—In that Ensign ——— ———, U. S. Navy, serving on board the U. S. S. ———, then lying in the harbor of ———, ———, having, with permission from proper authority, left the said ship ——— on leave of absence on January 5, 1915, did fail to return at or before sunset of the same day, and did remain absent from the said ship ——— until at or about 5.00 a. m., January 6, 1915, this in violation of a special order lawfully issued by Captain ——— ———, commanding said ship ———, of the following tenor, to wit, "Officers' leave shall expire at sunset," which order was issued, as the said Ensign ——— well knew, because of the unsatisfactory sanitary conditions existing in the city of ———, ———, in order to protect the officers and crew of said ship from danger of infection by yellow fever.

Charge.—CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN.

(*See* Naval Digest, 1916, p. 100, as to "what constitutes.")

Specification.—In that Gunner ——— ———, U. S. Navy, having become justly indebted to ———, of Washington, District of Columbia, in the sum of five hundred sixty-eight dollars and forty-five cents ($568.45), for goods purchased from the said ——— by him, the said ———, at various times between January 26, 1913, and April 19, 1913, and said debt being thereafter due and owing the said ———, with the exception of fifteen dollars ($15) paid on or about April 29, 1913, and being, on or about December 20, 1915, still in-

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debted to the aforesaid ——— in the sum of five hundred fifty-three dollars and forty-five cents ($553.45), the balance due on his account after the aforesaid payment, did, notwithstanding promises to pay said debt, and repeated demands for payment made on him, the said ———, by the said ———, and notwithstanding the facts that he had, on or about March 5, 1914, been reported to the Secretary of the Navy by the said ———, and again on or about October 9, 1914, to the Bureau of Navigation, Navy Department, by the said ——— for the nonpayment of said indebtedness, as he, the said ———, well knew, neglect and fail to pay to the said ——— the amount of the aforesaid indebtedness due and owing as aforesaid, or any part thereof, and has ever since continued in such neglect and failure, and he, the said ———, has therein and thereby exhibited a dishonorable indifference to his just indebtedness and a disregard of his obligations as an officer and a gentleman.

Specification.—In that Gunner ——— ———, U. S. Navy, having, on or about March 5, 1914, been reported to the Secretary of the Navy by ———, of Washington, District of Columbia, for the nonpayment of a just indebtedness of five hundred fifty-three dollars and forty-five cents ($553.45), the balance of an account due and owing the said ——— for goods purchased by the said ——— at various times between January 26, 1913, and April 19, 1913, and said indebtedness being thereafter due and owing, and an itemized account of said indebtedness having been referred to him, the said ———, by indorsement, in tenor as follows:

"NAVY DEPARTMENT,
"BUREAU OF NAVIGATION,
"*Washington, D. C., March 6, 1914.*

"To: Gunner ——— ———, U. S. N., U. S. S. ——— (commanding officer).

"Subject: Re alleged indebtedness to ———.

"1. Referred for such statement as you may desire to make relative to this alleged indebtedness.

"2. You will inform the department immediately—

"First. Is this a just debt and owed by you?

"Second. If it be a just debt, have you taken any steps to make payment? If so, when?

"Third. When do you propose to pay it in full?

"3. If it is a just debt, an official report will be made to the department when it has been paid.

"4. Return all papers.

"——— ———."

he, the said ———, did return said indorsement to the Bureau of Navigation aforesaid, with a written statement, in tenor as follows:

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"U. S. S. ———,
"*Shanghai, China, May 14, 1914.*

"From: Gunner ———, U. S. Navy.
"To: Bureau of Navigation, via official channels.
"Subject: Re alleged indebtedness to ———.
"Reference: Bureau of Navigation's indorsement of March 6, 1914.

"1. In compliance with the foregoing reference I have to state that the bill of ——— is a just debt.

"2. My reason for failing to pay said debt is that unforeseen necessities have made immediate demands upon my money. I am making arrangements at present for the payment of this debt and will make payment on or about July 1, 1914.

"———. ———."

and he, the said ———, did thereafter neglect and fail to make a payment to the said ——— on or about July 1, 1914, as he stated he would do in his written statement as above set forth, and has ever since continued in such neglect and failure, and he, the said ———, has therein and thereby exhibited a dishonorable indifference to his written word and just indebtedness and a disregard of his obligations as an officer and a gentleman.

Specification.—In that Ensign ——— ———, U. S. Navy, having, on or about April 16, 1914, voluntarily signed a paper pledging himself to abstain from all use of intoxicating liquors, except when prescribed as medicine, for a period of five years, which paper was formally witnessed by Captain ——— ———, U. S. Navy, the commanding officer of the said ———, did, on or about October 25, 1915, in the city of ———, ———, notwithstanding his pledge so given and in violation thereof, drink intoxicating liquor not prescribed as medicine; and he, the said ———, did thereby exhibit a disregard of his obligations as an officer and a gentleman.

Charge.—Culpable Inefficiency in the Performance of Duty.

Specification.—In that Lieutenant ——— ———, U. S. Navy, serving as navigator on board the U. S. S. ———, making passage from ——— to ———, on February 2, 1915, well knowing that at about sunset of said day the said ship had nearly run her estimated distance from the four o'clock postmeridian position, obtained and plotted by him, to the position of ———, and well knowing the difficulty of sighting ——— from a safe distance after sunset, did then and there fail to advise his commanding officer to lay a safe course for said ship to the northward before continuing on a westerly course; and the said Lieutenant ——— ——— was therein and thereby culpably inefficient in the performance of his duty as navigator, in consequence of which the said ship was, at about 6.50 p. m.

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on the day above mentioned, run upon ——— Bank, in the ——— Sea, in about latitude ——— degrees, ——— minutes north, and longitude ——— degrees, ——— minutes west, and was stranded.

Specification.—In that Lieutenant (junior grade) ——— ———, U. S. Navy, while serving as officer of the deck on board the U. S. S. ———, a steam vessel, making passage from ——— to ———, having been informed between 8.00 and 9.00 p. m. on March 13, 1915, that the said ship ——— was approaching a sailing vessel, both said vessels being then off ———, ———, did then and there fail to issue and see effected such timely orders as were necessary to cause the said ship ——— to keep out of the way of said sailing vessel by passing astern of the said sailing vessel, and he, the said ———, was therein and thereby culpably inefficient in the performance of his duty as officer of the deck, by reason of which inefficiency the U. S. S. ——— collided, at the time and place aforesaid, with the said sailing vessel, being the schooner ———, of ———, ———, as a result of which collision the said schooner was sunk.

Specification.—In that Captain ——— ———, U. S. Navy, being in command of the U. S. S. ———, making passage from ——— to ———, on the afternoon of May 20, 1915, well knowing that the said ship was approaching ——— Shoal off ———, and that the weather was then and there foggy and misty, did, nevertheless, then and there fail to set a safe course for passing said ——— Shoal, in consequence of which the said ship was, at or about 4.00 p. m. on the day aforesaid, run upon ——— Shoal and stranded; and he, the said ———, was therein and thereby culpably inefficient in the performance of his duty as commanding officer of said ship.

Specification.—In that Passed Assistant Paymaster ——— ———, U. S. Navy, serving on board the U. S. S. ———, having, as supply officer of said ship, between June 1, 1915, and March 31, 1916, issued to the officers' messes of said ship various quantities, amounts unknown, of beef, veal, and other meats charged to the general mess of said ship, did fail to keep or cause to be kept a proper account of the issue of said provisions, and was therein culpably inefficient in the performance of duty.

Charge.—Desertion. (*See* C. M. O. 41, 1914, 3.)

Specification.—In that ——— ———, landsman, U. S. Navy, did, on or about May 26, 1915, while a general court-martial prisoner at the United States naval prison, navy yard, ———, desert from said prison and from the U. S. Navy, and did remain a deserter until he was delivered on board the U. S. S. ———, at ———, on or about July 3, 1915.

Specification.—In that ——— ———, seaman, alias ——— ———, coal passer, U. S. Navy, did, on or about July 6, 1915, while serving

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under the name and rate of ——— ———, seaman, desert from the U. S. S. ———, at ———, and from the U. S. Navy, and did remain a deserter until he was identified, on or about April 4, 1916, while serving under the name and rate of ——— ———, coal passer, U. S. Navy.

Specification.—In that ——— ———, seaman, U. S. Navy, did, on or about October 15, 1915, desert from the U. S. S. ———, at ———, and from the U. S. Navy, and did remain a deserter until he was delivered on board the aforesaid ship, at the aforesaid place, on or about October 18, 1915.

Specification.—In that ——— ———, fireman first class, U. S. Navy, did, on or about August 8, 1915, while oiler, U. S. Navy, desert from the U. S. S. ———, at ———, and from the U. S. Navy, and did remain a deserter until he was delivered on board the receiving ship at ———, ———, on or about August 30, 1915.

Specification.—In that ——— ———, private, U. S. Marine Corps, did, on or about March 20, 1913, desert from the United States marine barracks, navy yard, ———, and from the U. S. Marine Corps, and did remain a deserter until he surrendered himself at the United States marine barracks, navy yard, ———, on or about August 20, 1913.

Specification.—In that ——— ———, private, U. S. Marine Corps, did, on or about October 2, 1915, desert from the U. S. S. ———, at ———, and from the U. S. Marine Corps, and did remain a deserter until he was identified, on or about February 2, 1916, at ———, while an applicant for enlistment in the U. S. Navy under the name of ———.

Specification.—In that ——— ———, mess attendant third class, U. S. Navy, did, on or about June 27, 1915, while a general court-martial probationer, desert from the U. S. S. ———, at ———, and from the U. S. Navy, and did remain a deserter until he was delivered on board the U. S. S. ———, at ———, on or about May 11, 1916.

Specification.—In that ——— ———, seaman, U. S. Navy, did, on or about April 20, 1917, desert from the U. S. S. ———, at ———, and from the U. S. Navy, and did remain a deserter until he was delivered on board the U. S. S. ———, at ———, on or about May 3, 1917.

Specification.—In that ——— ———, seaman, U. S. Navy, did, on or about August 18, 1914, desert from the receiving ship at ———, ———, and from the U. S. Navy, and did remain a deserter until he was delivered to naval authority on or about June 30, 1915, at Fort ———.

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Charge.—DISOBEDIENCE OF A LAWFUL ORDER OF THE SECRETARY OF THE NAVY.

Specification.—In that Carpenter ——— ———, U. S. Navy, serving on board the U. S. S. ———, having, on or about August 1, 1915, had addressed to him by the Secretary of the Navy a letter in words and figures substantially as follows: * * *, did, notwithstanding the direction of the Secretary of the Navy immediately to acknowledge the receipt of said letter, neglect and fail, and has ever since neglected and failed, to make such acknowledgment; and the said ——— did therein and thereby wilfully disobey a lawful order of the Secretary of the Navy.

Charge.—DISOBEYING THE LAWFUL ORDER OF HIS SUPERIOR OFFICER.

Specification.—In that Ensign ——— ———, U. S. Navy, serving on board the U. S. S. ———, having, on or about May 19, 1915, on board said ship, been ordered by Lieutenant ——— ———, U. S. Navy, the executive officer of said ship, to superintend the work of breaking out the fore hold, did then and there refuse to obey and did wilfully disobey said lawful order.

Specification.—In that ——— ———, a private in the U. S. Marine Corps, serving at the United States marine barracks, navy yard, ———, ———, having, on or about March 10, 1916, at said marine barracks, been lawfully ordered by the commanding officer of said barracks, Major ——— ———, U. S. Marine Corps, to submit to the administration of typhoid prophylaxis, did then and there, on the date and at the place aforesaid, refuse to obey and did wilfully disobey said lawful order.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board U. S. S. ———, at ———, ———, having, on June 6, 1913, while on shore at said place as a member of a landing party for the protection of the United States consulate, been ordered by Lieutenant ——— ———, U. S. Navy, to cease being noisy and disorderly, did then and there refuse to obey and did wilfully disobey the said lawful order of the said Lieutenant ———, who was then and there in the execution of the duties of his office.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, having, on June 16, 1915, been ordered by ——— ———, chief boatswain's mate, U. S. Navy, to go to the berth deck of said ship and perform extra duty in accordance with the sentence of a summary court-martial, did then and there refuse to obey and did wilfully disobey the said lawful order of the said chief boatswain's mate, who was then and there in the execution of the duties of his office.

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Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, having, on May 17, 1915, while a member of the crew of the first steamer of said ship, been ordered by Lieutenant ——— ———, U. S. Navy, then officer of the deck of said ship, not to leave said first steamer between the hours of 3.00 and 4.00 p. m. on the day aforesaid, did, at about 3.30 p. m. on said day, leave said steamer and go to the canteen of said ship, and did thereby wilfully disobey the said lawful order of the said Lieutenant ———, who was then and there in the execution of the duties of his office.

Charge.—Disrespect to the Secretary of the Navy.

Specification.—In that Assistant Civil Engineer ——— ———, U. S. Navy, having, in a letter dated December 17, 1915, from the Secretary of the Navy, been directed to explain his failure to proceed to ———, ———, in accordance with an order of the Secretary of the Navy, dated November 15, 1915, did, at ———, on or about December 29, 1915, write, send, and publish or cause to be sent and published to the Secretary of the Navy a letter, in the words and figures following, to wit: * * *, which said letter contains contemptuous and disrespectful words of and against the Secretary of the Navy, and violates the respect due from him, the said ———, to the Secretary of the Navy.

Charge.—Disrespectful in Language and Deportment to his Superior Officer While in the Execution of His Office.

Specification.—In that Machinist ——— ———, U. S. Navy, serving on board the U. S. S. ———, having, on or about October 4, 1915, on board said ship, been ordered by the senior engineer officer of said ship, Lieutenant ——— ———, U. S. Navy, to inspect the clothing of his section of the engineer division, did, at the time and place aforesaid, say to said Lieutenant ———, in a disrespectful manner, "I haven't got time to do that now," or words to that effect, and therein and thereby the said Machinist ——— was disrespectful in language and deportment to his superior officer, the said Lieutenant ———, who was then and there in the execution of his office.

Specification.—In that Assistant Surgeon ———, U. S. Navy, serving on board the U. S. S. ———, at ———, ———, having, on or about November 16, 1915, on board said ship, been informed by his superior officer, Surgeon ——— ———, U. S. Navy, the senior medical officer of said vessel, that he had reported the said ———'s failure to inspect the brig of said ship in accordance with his, the said ———'s, orders, did then and there assume a disrespectful and

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defiant manner toward his said superior officer, and did reply: "Reported me! Go ahead and report; you have put your foot in it, I give you that for a tip," or words to that effect; and the said ——— was therein and thereby disrespectful in language and deportment to his superior officer, the said Surgeon ———, who was then and there in the execution of his office.

Specification.—In that Lieutenant (junior grade) ——— ———, U. S. Navy, serving on board the U. S. S. ———, did, on board said ship, on or about April 6, 1915, when refused permission by his superior officer, Lieutenant Commander ——— ———, U. S. Navy, the executive officer of the said ship, to leave said ship, in an insolent manner say to said Lieutenant Commander ——— ———: "* * *," or words to that effect; and the said ——— was therein and thereby disrespectful in language and deportment to his superior officer, the said ———, who was then and there in the execution of his office.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, at ———, ———, did, on June 6, 1915, while on shore at said place as a member of a landing party for the protection of the United States consulate, when ordered on sentry duty by Lieutenant ——— ———, U. S. Navy, commanding the said landing party, say in a defiant manner to said Lieutenant ———: "It's not my turn; you can't make me do it," or words to that effect, and was therein and thereby disrespectful in language and deportment to his superior officer, Lieutenant ———, who was then and there in the execution of the duties of his office.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, ———, ———, did, on August 15, 1915, while confined in the guardroom at said barracks, in reply to a question addressed to him by Second Lieutenant ——— ———, U. S. Marine Corps, the officer of the day at said place and time, reply in a surly and contemptuous manner, "Oh, get out of here; don't talk to me," or words to that effect, and was therein and thereby disrespectful in language and deportment to his superior officer, Second Lieutenant ——— ———, who was then and there in the execution of his office.

Charge.—DRUNKENNESS. (*See* C. M. O. 17, 1917, 4.)

Specification.—In that Lieutenant ——— ———, U. S. Navy, serving on board the U. S. S. ———, at ———, ———, was, on March 6, 1915, on board said ship, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

Specification.—In that Commander ——— ———, U. S. Navy, serving as captain of the yard, at the navy yard, ———, ———, was, on or about May 25, 1915, at the ——— Hotel in the city of ———, ———, under the influence of intoxicating liquor.

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Specification.—In that ——— ———, private, U. S. Marine Corps, serving on board the U. S. S. ———, at the navy yard, ———, ———, was, at said navy yard, on August 13, 1912, under the influence of intoxicating liquor and thereby unfit for duty.

Specification.—In that ——— ———, seaman, U. S. Navy, a patient at the naval hospital, ———, ———, was, on or about May 8, 1915, under the influence of intoxicating liquor at said hospital.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, was, on April 15, 1913, upon his return to said barracks from liberty, under the influence of intoxicating liquor and thereby unfit for duty.

Charge.—Drunkenness on Duty.

Specification.—In that Commander ——— ———, U. S. Navy, serving as commandant of the navy yard, ———, ———, was, on or about November 10, 1915, at his quarters in said yard, being then and there on duty, under the influence of intoxicating liquor.

Specification.—In that Lieutenant ——— ———, U. S. Navy, serving on board the U. S. S. ———, was, on or about May 24, 1915, while on duty as officer of the deck of said ship, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

Specification.—In that Lieutenant ——— ———, U. S. Navy, serving on board the U. S. S. ———, was, while on duty and mustering his division at quarters on said ship, on or about September 13, 1915, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, at ———, ———, was, on June 6, 1915, while on shore at said place on duty as a member of a landing party for the protection of the United States consulate, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, was, on November 22, 1915, while acting as corporal of the guard at said yard, under the influence of intoxicating liquor on guard.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving on board the U. S. S. ———, at the navy yard, ———, ———, was, on or about April 19, 1915, while a member of the guard of the day of the said ship, under the influence of intoxicating liquor on guard.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, having,

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on July 18, 1913, been regularly posted as a sentinel at the main gate at said navy yard, was, on said date, under the influence of intoxicating liquor while on said post.

Charge.—EMBEZZLEMENT. (*See* C. M. O. 4, 1913; 39, 1913.)

Specification.—In that Assistant Paymaster ——— ———, U. S. Navy, having, while serving on board the U. S. S. ———, on board said ship, received into his possession and under his control, in the execution and under the color of his office as aforesaid, money of the United States, furnished and intended for the naval service thereof, for the disbursement of which according to law he, the said ———, was responsible, did, during the period from March 31, 1915, to May 11, 1915, fail safely to keep and account for the sum of eight hundred dollars ($800), or thereabouts, of the aforesaid money of the United States, and did, therein and thereby, then and there embezzle the sum of eight hundred dollars ($800), or thereabouts, of money of the United States, furnished and intended for the naval service thereof.

Specification.—In that Paymaster ——— ———, U. S. Navy, while serving on board the U. S. S. ———, during the third and fourth quarters of the fiscal year ended June 30, 1913, to wit, from January 1, 1913, to June 30, 1913, having received into his possession and under his control, in the execution and under color of his office as aforesaid, twenty-nine cases, or thereabouts, of canned pineapples, of the total value of one hundred thirty-nine dollars and twenty cents ($139.20), or thereabouts, which canned pineapples of the quantity and value aforesaid were subsistence stores of the United States, furnished and intended for the naval service thereof, to wit, for issue to and consumption by the general mess on board said ship ———, and he, the said Paymaster ———, having then and there, during the period aforesaid, wrongfully and knowingly sold and disposed of, or caused to be sold and disposed of, in the ship's store on board said ship ———, the aforesaid subsistence stores of the United States of the value and amount of one hundred thirty-nine dollars and twenty cents ($139.20), or thereabouts, as aforesaid, he, the said Paymaster ———, did then and there embezzle and unlawfully convert to his own use said sum of one hundred thirty-nine dollars and twenty cents ($139.20), or thereabouts, money of the United States received by the said Paymaster ——— in the execution and under color of his office as aforesaid, being proceeds derived from the sale of the subsistence stores of the United States as aforesaid.

Specification.—In that Paymaster ——— ———, U. S. Navy, serving on board the U. S. S. ———, having, on or about February 25, 1915, received a lawful order from the Secretary of the Navy,

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dated February 5, 1915, directing him to transfer to Paymaster ——— ———, U. S. Navy, the public funds in his possession, and the said ———, having as pay officer of the said ship ———, between January 1, 1915, and February 25, 1915, received the sum of one thousand twenty-five dollars ($1,025), or thereabouts, lawful money of the United States, for subsistence stores of the United States, furnished and intended for the naval service thereof, and sold to officers' and other messes of said ship ———, which sum should have been transferred to his relief, Paymaster ——— ———, U. S. Navy, in obedience to the aforesaid order, did, on or about February 25, 1915, on board said ship ———, fail to transfer to his relief, the said Paymaster ———, the said sum of one thousand twenty-five dollars ($1,025), received for subsistence stores as aforesaid; and the said ——— did thereby embezzle the said sum from moneys of the United States in his custody.

Specification.—In that Paymaster ———, U. S. Navy, serving on board the U. S. S. ———, was on July 31, 1915, justly indebted to the United States in the sum of thirty-nine thousand five hundred seventy-three dollars and five cents ($39,573.05), money of the United States, under "General account of advances," for the safe-keeping and disbursement of which sum, in accordance with law, he, the said ———, was responsible; whereas he, the said ———, did have on hand in cash, on board said ship, on the said date, the sum of thirteen thousand nine hundred seventy dollars and five cents ($13,970.05), and subject to his check in the subtreasuries at New York and San Francisco the total sum of nineteen thousand three hundred twenty-three dollars and ninety-one cents ($19,323.91), making an aggregate sum of only thirty-three thousand two hundred ninety-three dollars and ninety-six cents ($33,293.96), accounted for; and the said ——— did, on the date aforesaid, in and by rendering a false and fraudulent return of balances to his credit, in words and figures as follows: "* * *," then and there embezzle and convert to his own use the sum of six thousand two hundred seventy-nine dollars and nine cents ($6,279.09), or thereabouts, from moneys of the United States in his custody, furnished and intended for the naval service thereof, said sum being the difference between the amount for which he was accountable to the United States and the amount accounted for as aforesaid.

Specification.—In that Paymaster ——— ———, U. S. Navy, serving at the naval station, ———, ———, having, between November 26, 1915, and March 1, 1916, had placed to his official credit in the United States subtreasury, ———, ———, the sum of one hundred and fifty thousand two hundred forty-five dollars and eighty-seven cents ($150,245.87), or thereabouts, lawful money of the United

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States, for disbursement at the naval station to which he was attached, and being authorized to draw from the same only as might be required for payments to be made by him in pursuance of law, did, on or about March 1, 1915, withdraw from the said moneys with which he was so entrusted, and did convert to his own use, the sum of five thousand dollars ($5,000), which sum was not so withdrawn and converted in payment made pursuant to law, by drawing a check, numbered thirty-eight thousand eight hundred and seventy-seven, in favor of himself for the last-mentioned amount on the aforesaid subtreasury, and receiving the money for the same from the First National Bank of ———, ———, thereby effecting an embezzlement of five thousand dollars ($5,000), lawful money of the United States, furnished and intended for the naval service thereof.

Charge.—Executing a Fraud Against the United States.

Specification.—In that Paymaster ——— ———, U. S. Navy, serving on board the U. S. S. ———, did, between July 1, 1915, and September 30, 1915, on board said ship, issue or cause to be issued, from the stores of the United States on board said ship entrusted to his charge, one overcoat, one blue overshirt, two pairs of shoes, and various other articles of clothing of aggregate value of about thirty-five dollars ($35), to ——— ———, seaman, U. S. Navy, attached to said ship; and did wilfully and with corrupt intent neglect and fail to charge or cause to be charged for the same as such on the clothing roll of said ship for the then current quarter, but in lieu thereof did knowingly and fraudulently overcharge the account of money paid the said ——— during the current quarter on the pay roll of said ship the amount of thirty-five dollars ($35).

Specification.—In that Pay Clerk ——— ———, U. S. Navy, while serving at the navy yard, ———, ———, as assistant to the pay officer of the naval prison at said navy yard, did, on or about March 29, 1915, having received into his charge, possession, custody, and control the sum of eighty-four dollars and forty-two cents ($84.42), or thereabouts, lawful money of the United States furnished and intended to be paid to ——— ———, landsman, U. S. Navy, who was then being discharged from the United States naval prison at the aforesaid navy yard, and from the United States naval service, wilfully, corruptly, and with intent to defraud, deliver to the said ——— the sum of sixty-four dollars and forty-two cents ($64.42), or thereabouts, lawful money of the United States, well knowing that the said ——— was lawfully entitled to the sum of eighty-four dollars and forty-two cents ($84.42), and had authority to receive same, for which sum of sixty-four dollars and forty-two cents ($64.42), the said ——— did then and there give a receipt, and the said ———

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did therein and thereby defraud the United States of the sum of twenty dollars ($20), or thereabouts, lawful money of the United States, by then and there converting and appropriating the said twenty dollars ($20) to his, the said ———'s, own use.

Charge.—FAILING TO USE HIS UTMOST EXERTIONS TO DETECT, APPREHEND, AND BRING TO PUNISHMENT ALL OFFENDERS.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, having, on or about February 20, 1911, at said navy yard, been informed by ——— ———, private, U. S. Marine Corps, that he, the said ——— ———, was about to commit a theft in the storeroom of the post quartermaster at said barracks, and having witnessed the aforesaid ——— ———, in company with others, names unknown, commit a theft in the aforesaid storeroom, did then and there fail to prevent, or to make any effort to prevent, the commission of said theft, and did fail to use his utmost exertions to detect, apprehend, and bring to punishment the perpetrators of said theft.

Charge.—FALSEHOOD.

Specification.—In that Passed Assistant Surgeon ——— ———, U. S. Navy, member and recorder of a board of medical examiners in session at the naval hospital, navy yard, ———, ———, having, on or about October 13, 1913, refused, on account of alleged informalities, to record the proceedings had by the said board in the case of Ensign ——— ———, U. S. Navy, did, on said date, state to Medical Inspector ——— ———, U. S. Navy, president of said board, that he, the said ——— ———, had referred the matter of his action in refusing to record the proceedings of the board as aforesaid to the Secretary of the Navy, who had sustained his action in so refusing, which said statement was wholly false and intended to deceive, as he, the said ——— ———, well knew.

Specification.—In that Colonel ——— ———, U. S. Marine Corps, being in command of the marine barracks, navy yard, ———, ———, well knowing that the northwest chimney of the building at said barracks occupied as officers' quarters was in a dangerous condition, such fact having been officially reported to him by First Lieutenant ——— ———, U. S. Marine Corps, on April 2, 1915, and having, on or about April 10, 1915, received from the Commandant of the U. S. Marine Corps a telegram of that date substantially as follows: "* * *," did, on the same day, send to said commandant a telegram in reply substantially as follows: "* * *," the said ——— well knowing that the first order given by him to discontinue the use of

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said defective chimney was not issued until April 10, 1915, and that so much of his aforesaid telegram as stated that he had ordered discontinuance of the use of the said chimney as soon as the defect was discovered therein was wholly false and intended to deceive.

Specification.—In that Passed Assistant Paymaster ——— ———, U. S. Navy, then serving on board the U. S. S. ———, at Shanghai, China, having received from the Navy Department a letter in words and figures substantially as follows, to wit: "* * *," did, on or about December 28, 1915, address to the Secretary of the Navy a letter in words and figures substantially as follows, to wit: "* * *," the said ——— well knowing that the statements contained in his letter of December 28, 1915, to the effect that he had received the sum of two thousand five hundred dollars ($2,500) from his former clerk, ——— ———, as a loan and not in any sense as a bond, was wholly false and intended to deceive.

Specification.—In that Captain ——— ———, U. S. Marine Corps, in command of the marine barracks, navy yard, ——— ———, acting as post treasurer at said barracks, and being in such capacity charged with the expenditure of the company fund thereof and the purchase of supplies for the use of the said barracks, did, on August 4, 1915, upon turning over the command of said barracks, preliminary to his detachment therefrom on said day, to his relief, Captain ——— ———, U. S. Marine Corps, state to the said ———, in substance, that all financial claims against the barracks aforesaid had been settled, and that there were then no debts outstanding chargeable to the said company fund; whereas he, the said ———, well knew that said barracks was, on the day above mentioned, indebted to one ——— ———, of the city of ———, ———, in the sum of twenty-three dollars ($23), for supplies furnished by him to said barracks during the fiscal year ending June 30, 1915, which supplies had been purchased from him on credit by the said ——— for the use of the barracks aforesaid, and were a proper charge upon said company fund, said statement, as above set forth, being false, and, as such, made by the said ——— to the said ——— knowingly and wilfully and with intent to deceive.

Specification.—In that ——— ———, quartermaster third class, U. S. Navy, serving on board the U. S. S. ———, having on June 2, 1914, entered the warrant officer's pantry of said ship in company with ——— ———, seaman, U. S. Navy, did, on or about June 3, 1914, upon being questioned by Commander ——— ———, U. S. Navy, the executive officer of said ship, as to who had accompanied him, the said ———, on the occasion specified, state to the said Commander ——— that he was not accompanied by any person, which statement was knowingly false and intended to deceive.

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Charge.—FORGING A SIGNATURE FOR THE PURPOSE OF OBTAINING PAYMENT OF A CLAIM AGAINST THE UNITED STATES.

Specification.—In that Assistant Surgeon ——— ———, U. S. Navy, serving at the United States Naval Hospital, ———, ———, did, on or about March 16, 1915, upon check number eight hundred fifty-five thousand two hundred forty-six, dated March 15, 1915, drawn upon the Treasurer of the United States at Washington, District of Columbia, by Pay Inspector ——— ———, U. S. Navy, payable to the order of "——— ———, U. S. N.," for the sum of sixty-five dollars and fifty-six cents ($65.56), due Passed Assistant Surgeon ——— ———, U. S. Navy, for pay, without authority, unlawfully make, sign, and counterfeit upon the back of said check the signature of "——— ———, U. S. N.," thus making said check payable to bearer, for the purpose of fraudulently obtaining payment to him, the said Assistant Surgeon ——— ———, the claim of the said ——— ———, U. S. Navy, against the United States for pay, to whom the said check had been lawfully sent to satisfy said claim.

Charge.—FRAUD. (*See* C. M. O. 4, 1916, 3–4.)

Specification.—In that ——— ———, yeoman first class, U. S. Navy, serving on board the U. S. S. ———, at the navy yard, ———, ———, did, between July 1, 1915, and August 7, 1915, on board the aforesaid ship, knowingly and fraudulently undercharge on the pay roll of the said ship for the then current quarter, to wit, the first quarter of the fiscal year, 1916, to his own, the said ———'s account, the sum of nineteen dollars and thirty-six cents ($19.36), United States money, and did falsely balance the discrepancy resulting therefrom on the said pay roll by knowingly and fraudulently overcharging on the said pay roll to the accounts of the following-named men, all belonging to the crew of the said ship at some time during the quarter aforesaid, the amounts in United States money hereinafter stated, to wit: ——— ———, machinist's mate first class, U. S. Navy, the sum of two dollars and seventy-five cents ($2.75); ——— ———, gunner's mate second class, U. S. Navy, three dollars and fifty cents ($3.50); ——— ———, seaman, U. S. Navy, three dollars and five cents ($3.05); ——— ———, seaman, U. S. Navy, three dollars ($3); ——— ———, ordinary seaman, U. S. Navy, two dollars and fifty cents ($2.50); ——— ———, ordinary seaman, U. S. Navy, two dollars ($2); ——— ———, fireman second class, U. S. Navy, two dollars and fifty-six cents ($2.56); the aggregate amount overcharged being a total of nineteen dollars and thirty-six cents ($19.36), United States money.

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Charge.—FRAUDULENT ENLISTMENT. (*See* C. M. O. 17, 1916, 5–8.)

Specification.—In that ——— ———, private, U. S. Marine Corps, *alias* ——— ———, formerly private, U. S. Army, did, on or about December 8, 1915, at the marine barracks, navy yard, ———, ———, procure himself to be accepted and did fraudulently enlist as a private in the U. S. Marine Corps, under the name of ——— ———, by falsely representing that he had never been discharged from the United States service through sentence of a military court and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on or about November 19, 1915, while serving under the name and rank of ——— ———, private, been discharged from the U. S. Army, pursuant to the sentence of a general court-martial, with a dishonorable discharge; and, furthermore, that he, the said ——— ———, *alias* ——— ———, has, since said enlistment, received pay and allowances thereunder.

Specification.—In that ——— ———, apprentice seaman, *alias* ——— ———, formerly apprentice seaman, U. S. Navy, did, on or about September 30, 1915, at the U. S. Navy recruiting station, Atlanta, Georgia, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the U. S. Navy, under the name of ——— ———, by falsely representing that he had had no previous service in the U. S. Navy and that he had never been discharged from the United States service through sentence of a military court, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on or about April 23, 1914, while serving under the name and rate of ——— ———, apprentice seaman, been discharged from the U. S. Navy, pursuant to the sentence of a general court-martial, with a dishonorable discharge; and, furthermore, that he, the said ——— ———, *alias* ——— ———, has, since said enlistment, received pay and allowances thereunder.

Specification.—In that ——— ———, fireman third class, *alias* ——— ———, seaman, U. S. Navy, did, on or about February 21, 1915, at the U. S. Navy recruiting station, Chicago, Illinois, procure himself to be accepted and did fraudulently enlist as a coal passer in the U. S. Navy, under the name of ——— ———, by falsely representing that he had had no previous service in, and had never deserted from, the U. S. Navy, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on or about July 6, 1913, while serving under the name and rate of ——— ———, seaman, deserted from the U. S. Navy and was a deserter at large.

Specification.—In that ——— ———, apprentice seaman, formerly apprentice seaman, U. S. Navy, did, on or about August 28, 1915,

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at the U. S. Navy recruiting station, Kansas City, Missouri, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the U. S. Navy by falsely representing that he had had no previous service in the U. S. Navy, and that he had never been discharged from the United States service on account of disability, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on or about January 11, 1915, while serving as an apprentice seaman, been discharged from the U. S. Navy for physical disability, pursuant to a recommendation of a medical board of survey; and, furthermore, that he, the said ———, has, since said enlistment, received pay and allowances thereunder.

Specification.—In that ——— ———, apprentice seaman, U. S. Navy, *alias* ——— ———, formerly private, U. S. Marine Corps, did, on or about June 24, 1915, on board the U. S. S. ———, at ———, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the U. S. Navy, under the name of ——— ———, by falsely representing that he had never deserted from the U. S. Marine Corps, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on or about November 7, 1911, while serving under the name and rank of ——— ———, private, deserted from the U. S. Marine Corps, and was a deserter at large; and, furthermore, that he, the said ——— ———, *alias* ——— ———, has, since said enlistment, received pay and allowances thereunder.

Specification.—In that ——— ———, apprentice seaman, *alias* ——— ———, formerly ordinary seaman, U. S. Navy, did, on or about July 15, 1915, on board the U. S. S. ———, at ———, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the U. S. Navy, under the name of ——— ———, by falsely representing that he had had no previous service in the U. S. Navy, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on or about May 26, 1915, while serving under the name and rate of ——— ———, ordinary seaman, been discharged from the U. S. Navy, for inaptitude; and, furthermore, that he, the said ——— ———, *alias* ——— ———, has, since said enlistment, received pay and allowances thereunder.

Charge.—GAMBLING.

Specification.—In that ——— ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, did, on or about October 10, 1912, in number two fireroom of said vessel, gamble for money with cards.

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Charge.—HAZING.

(Triable by *court-martial* ordered by the Superintendent of the Naval Academy. See Chapter X.)

Specification.—In that Midshipman ——— ———, U. S. Navy, a member of the third class at the United States Naval Academy, Annapolis, Maryland, and serving at said Naval Academy, did, at or about 7.45 a. m. April 3, 1914, in Bancroft Hall in the said Naval Academy, haze Midshipman ——— ———, U. S. Navy, a member of the fourth class at said Naval Academy, by causing the said Midshipman ——— to stand on his head and perform calisthenic exercises, therein and thereby exercising unwarranted assumption of authority over the said Midshipman ———, causing the said Midshipman ——— to suffer indignity, humiliation, hardship, and oppression.

Charge.—IMPROPERLY HAZARDING THE VESSEL UNDER HIS COMMAND, IN CONSEQUENCE OF WHICH SHE WAS RUN UPON A ROCK AND LOST.

Specification.—In that Commander ——— ———, U. S. Navy, then in command of the U. S. S. ———, while said ship was at sea making a passage from ——— to ———, on November 19, 1915, about 9 p. m., the weather at the time being thick and foggy, the night dark, and the currents uncertain, did issue written night orders in substance as follows: That during the night the said ship ——— was to proceed under slow speed, and was to steer a course of two hundred forty degrees, by standard compass; the said Commander ——— knowing at the time he issued the aforesaid orders, from reports which had been made to him by Lieutenant ——— ———, U. S. Navy, the navigator of said ship at the time, and from calculations which he, the said Lieutenant ———, had made, that the ship would be, at the time the course was to be changed to two hundred forty degrees, by standard compass, in obedience to the aforesaid night orders, about thirty miles from the ——— Islands, and that the said course of two hundred forty degrees, by standard compass, would head the said ship ——— almost directly for the said ——— Islands, which islands it was dangerous to approach on a dark and foggy night, and in issuing the aforesaid night orders he, the said Commander ———, did improperly hazard the ship under his command, which ship, while being run in obedience to the aforesaid night orders, ran upon a rock at about 4.05 a. m., November 20, 1915, which rock was close to the southeast end of the East ——— Island, or thereabouts, and in consequence of which striking upon the aforesaid rock, the said ship ——— was lost.

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Charge.—IMPROPERLY HAZARDING THE VESSEL UNDER HIS COMMAND, IN CONSEQUENCE OF WHICH SHE WAS RUN UPON A SHOAL AND SERIOUSLY INJURED.

Specification.—In that Lieutenant ——— ———, U. S. Navy, being in command of the U. S. S. ———, making passage from ———, ———, to ———, ———, did, on or about June 10, 1916, while approaching the harbor of ———, cause to be steered a course that lay over ——— Reef, near said harbor, and where there was at the same time available a wide, clear, and deep channel to the eastward of said reef, and this he did in the absence of any necessity of shaping a course over said reef rather than away therefrom, and he, the said Lieutenant ———, did then and there, in the manner aforesaid, suffer the vessel under his command, the said U. S. S. ———, to be hazarded, without justifiable cause, in consequence of which hazard as aforesaid the said ship ——— was, on or about the date aforesaid, then and there run upon said ——— Reef, and was thereby, at the time and place aforesaid, seriously injured.

Charge.—KNOWINGLY AND WILFULLY MISAPPROPRIATING AND APPLYING TO HIS OWN USE AND BENEFIT MONEY OF THE UNITED STATES INTENDED FOR THE NAVAL SERVICE THEREOF.

Specification.—In that Chief Pay Clerk ——— ———, U. S. Navy, did, at various times during the period from about January 1, 1915, to about March 31, 1915, exact dates unknown, on board the U. S. S. ———, while serving on board said ship as the clerk of Passed Assistant Paymaster ——— ———, U. S. Navy, serving on board said ship ———, then and there, in the course of his employment as aforesaid, from money lawfully delivered by the United States to the said Passed Assistant Paymaster ——— in the execution of his duties as paymaster of the aforesaid ship, knowingly and wilfully misappropriate money of the United States intended for the naval service thereof, to the value of six hundred dollars ($600), or thereabouts, which money came into his, the said ———'s, custody and possession in the course of his employment as aforesaid, and he, the said ———, did then and there apply the said money of the United States to his own use and benefit.

Charge.—LEAVING POST BEFORE BEING REGULARLY RELIEVED.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, having, on June 4, 1912, been regularly posted as a sentinel on post number four at said navy yard, did, at about 11.00 p. m., on said date, while so posted, leave said post before being regularly relieved.

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Specification.—In that ——— ———, private, U. S. Marine Corps, serving on board the U. S. S. ———, having, on September 8, 1913, been regularly posted as a sentinel over prisoners on board said ship, did, between 6.00 and 8.00 p. m., on said date, while so posted, leave said post before being regularly relieved.

Charge.—Leaving Station Before Being Regularly Relieved.

Specification.—In that Lieutenant ——— ———, U. S. Navy, serving on board the U. S. S. ———, having, at or about 8.00 p. m., May 24, 1912, regularly relieved the officer of the deck of the said ship, did, at about 9.00 p. m., of the same day, while officer of the deck of the said ship, leave his station before being regularly relieved.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on October 22, 1915, while acting as corporal of the guard at the main gate of said yard, absent himself from his station before being regularly relieved, and did remain so absent for a period of about one hour.

Charge.—Making False and Fraudulent Written Reports for the Purpose of Aiding Others to Obtain the Approval of Claims Against the United States.

Specification.—In that Naval Constructor ——— ———, U. S. Navy, being, on or about May 1, 1915, and continuously thereafter until the date hereof, serving at the navy yard, ———, ———, as the head of the department of ——— at said yard, and it being a part of his duty as such head of department to supervise and control all work pertaining to said department and to have the general superintendence, charge, and direction of all persons employed in said department, and it being also a part of his duty, when doing work for another department, to send every morning through the commandant to the head of such department a report of the number and class of men employed, with their rates of pay, did, from time to time, between May 28, 1915, and June 30, 1915, cause to be prepared and transmitted over his official signature, as the head of the department of ———, to the heads of other departments at said yard, to wit, to the heads of the departments of ———, ———, and ———, statements of labor performed for such other departments, respectively, which statements contained the names of laborers and mechanics who were credited with having rendered, respectively, one and five-eighths days' service on certain days therein specified; whereas, in fact, as he, the said ———, well knew, such laborers and mechanics had rendered and were entitled to be credited with one and three-eighths days' service only on such

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days; and the said ——— did, therein and thereby, make false and fraudulent written reports of labor performed by employees of the department under his charge for the purpose of aiding others to obtain the approval of claims against the United States.

Charge.—MAKING AND USING FALSE PAPERS FOR THE PURPOSE OF AIDING OTHERS TO OBTAIN THE APPROVAL AND PAYMENT OF A CLAIM AGAINST THE UNITED STATES.

Specification.—In that Colonel ——— ———, U. S. Marine Corps, being in command of the marine barracks, navy yard, ———, ———, having, on October 31, 1915, made a requisition on Colonel ——— ———, quartermaster, U. S. Marine Corps, in words and figures as follows: "* * *," and the said quartermaster of the Marine Corps, on November 3, 1915, the public exigency requiring the immediate delivery of the articles enumerated in said requisition, having ordered that they be procured by open purchase, and the said ——— having purchased said articles from ——— ———, Fulton Street, Brooklyn, New York, ——— did, on or about November 15, 1915, in order to obtain the approval, and payment to said firm, of its claim against the United States for said articles, prepare and forward to said quartermaster, U. S. Marine Corps, an open purchase voucher, in words and figures as follows: "* * *," the said ——— well knowing that the articles enumerated in said voucher, ———, were not inspected and received by him at the navy yard, ———, ———, and therefore that the certificates on said voucher made and signed by him that the said articles were so inspected and received were false.

Charge.—MALINGERING.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on or about April 21, 1911, while a patient at the United States Naval Hospital, ———, ———, at said hospital, feign to be ill and incapacitated for the proper performance of duty by pretending that he could not speak aloud, whereas he was, in fact, capable of speaking aloud, and did continue in the aforesaid pretension until on or about August 9, 1911; and he, the said ——— ———, was, in consequence of said pretension, retained as a patient in the said hospital between the aforesaid dates, and was thereby excused from performing duty between the said dates.

Charge.—MALPRACTICE.

Specification.—In that Surgeon ——— ———, U. S. Navy, serving at the navy yard, ———, ———, having, on November 2, 1912,

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at the naval hospital at said navy yard, been applied to for treatment for a disease of the eyes by Lieutenant ——— ———, U. S. Navy, stationed at the navy yard aforesaid, did, on the date and at the place aforesaid, through reprehensible ignorance and carelessness, apply a caustic to the eyes and eyelids of the said Lieutenant ——— ——— in such manner as to cause serious injury to both eyes of the said Lieutenant ——— ———, and seriously to impair the vision of the said Lieutenant ——— ———.

Charge.—MALTREATING A PERSON SUBJECT TO HIS ORDERS.

Specification.—In that Commander ———, U. S. Navy, being in command of the U. S. S. ———, did, on or about March 5, 1915, while the said ship was at ———, ———, maltreat ——— ———, then a fireman second class, U. S. Navy, and stationed on board said ship, by causing him, the said ———, to be confined in a straitjacket on board said ship without justifiable cause therefor and to be kept so confined during a period of about seven days.

Specification.—In that Lieutenant ——— ———, U. S. Navy, serving on board the U. S. S. ———, did, on April 6, 1915, on board said ship, wilfully and without justifiable cause assault and kick ——— ———, mess attendant third class, U. S. Navy, serving on board the said ship.

Charge.—MANSLAUGHTER.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the United States marine barracks, ———, ———, did, at about 11.30 p. m., on October 23, 1915, in a house occupied by one ——— ———, at ———, ———, feloniously and wilfully, and without justifiable cause, assault and strike one ——— ———, seaman, U. S. Navy, with a certain blunt instrument, further description unknown, which he, the said ———, then and there had and held in his hands, then and there inflicting a mortal wound in and upon the left side of the head of the said ———, of which said mortal wound so inflicted, as aforesaid, the said ——— died at about 1.20 a. m., on October 31, 1915.

Charge.—MAYHEM.

Specification.—In that ——— ———, boilermaker, U. S. Navy, serving on board the U. S. S. ———, did, on or about May 28, 1915, on board said ship, assault ——— ———, coal passer, U. S. Navy, stationed on the said ship, and did then and there unlawfully and maliciously bite off the right forefinger of the said ——— ———, thereby maiming and wounding the said ——— ———.

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Charge.—MURDER.

(*Note.—See article 6 of the Articles for the Government of the Navy, which has been construed as restricting the jurisdiction of a naval general court-martial over the crime of murder to cases where this offense is committed without the territorial jurisdiction of the United States.*)

Specification.—In that ——— ———, fireman second class, U. S. Navy, serving on board the U. S. S. ———, at anchor off Cherbourg, France, did, at or about 9.00 a. m. on November 18, 1913, while on liberty ashore at or near the junction of the streets known as ——— and ——— in the city of Cherbourg, France, wilfully, feloniously, with malice aforethought, and without justifiable cause, attack with a deadly weapon, to wit, a knife, ——— ———, water tender, U. S. Navy, serving on board the said ship ———, and did then and there inflict, with the knife aforesaid, a mortal wound on the left side of the chest of the said ———, of which said mortal wound, inflicted as aforesaid, the said ——— died at about 1.00 p. m. on the date aforesaid.

Charge.—NEGLECT OF DUTY.

Specification.—In that Lieutenant ——— ———, U. S. Navy, while serving on board the U. S. S. ——— as navigator of said vessel, making passage from ——— to ———, did, on May 4, 1913, although the weather permitted, neglect and fail to obtain the local deviation of the standard compass of said ship; and the said Lieutenant ——— did thereby neglect his duty as navigator of said ship.

Specification.—In that Chief Boatswain ——— ———, U. S. Navy, commanding United States coal barge number two, laden with coal, at sea, in tow of the U. S. S. ———, making passage from ——— to ———, did, between 10.00 p. m., December 19, 1915, and 6.00 a. m., December 20, 1915, neglect and fail to keep himself informed at proper intervals of the depth of water in said barge number two, and did therein and thereby neglect his duty as commanding officer of said barge.

Specification.—In that Chief Boatswain ——— ———, U. S. Navy, commanding United States coal barge number two, laden with coal, at sea, in tow of the U. S. S. ———, making passage from ——— to ———, did, between 10.00 p. m., December 19, 1915, and 6.00 a. m., December 20, 1915, neglect and fail to cause to be kept a steam pressure in the boiler of said barge sufficient to work the pump, and did therein and thereby neglect his duty as commanding officer of said barge.

Specification.—In that Chief Boatswain ——— ———, U. S. Navy, commanding United States coal barge number two, laden with

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coal, at sea, in tow of the U. S. S. ———, making passage from ——— to ———, having between 10.00 p. m., December 19, 1915, and 6.00 a. m., December 20, 1915, negligently allowed water to enter said barge to a hazardous depth, did, at or about 7.00 a. m., December 20, 1915, in latitude twenty-six degrees and one minute North, and longitude seventy-nine degrees and forty-seven minutes West, or thereabouts, abandon said barge without making an effort to free her from such water or to save any part of her outfit, and the said ——— did therein and thereby neglect his duty as commanding officer of said barge.

Specification.—In that Lieutenant (junior grade) ——— ———, U. S. Navy, commanding the U. S. S. ——— engaged in towing coal barge number two, laden with coal, making passage from ——— to ———, which barge was, at or about 7.00 a. m., December 20, 1915, in latitude twenty-six degrees and one minute North, and longitude seventy-nine degrees and forty-seven minutes West, or thereabouts, abandoned by her commanding officer, Chief Boatswain ——— ———, U. S. Navy, and crew, and he, the said ———, having been informed that water had entered said barge to a hazardous depth, did fail to send a relief crew on board said barge and did therein and thereby neglect his duty as commanding officer of said ship.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, having, at or about 5.00 a. m. on September 9, 1916, been regularly posted as a sentinel over prisoners confined in the cells at said barracks, did, between 5.00 a. m. and 5.45 a. m. on the day aforesaid, suffer ——— ———, fireman third class, a prisoner confined in one of the aforesaid cells, to escape by way of the window of the cell in which the said ———was confined, notwithstanding the fact that the window of said cell was protected by bars, which bars were, at the time the said ——— was posted as aforesaid, secured in such a way as to prevent the exit of the said prisoner through the aforesaid window; and the said ——— did thereby neglect his duty as sentinel on said post.

Specification.—In that ——— ———, corporal, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, being, on January 29, 1915, on duty as corporal of the prison guard at said barracks, and having, at or about 7.00 p. m. on the said day, taken the prisoners under his charge, eleven in number, more or less, from the cells on board the U. S. S. ———, where they were confined, to the sinks on the dock for the purpose of policing said prisoners, did, after said prisoners had entered the sinks aforesaid, leave them under a guard consisting of two sentinels, and did go aboard said ship ———, moored to the dock abreast of said sinks, where he remained for a period of about ten minutes, and upon his return from said vessel did neglect and fail to verify the number of said

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prisoners before taking them again on board said ship; and the said ——— ——— did therein and thereby neglect his duty as corporal of the guard, in consequence of which neglect one of the prisoners hereinbefore mentioned, ——— ———, private, U. S. Marine Corps, did, between 7.00 p. m. and 7.30 p. m., on the day aforesaid, escape.

Charge.—Negligence in Obeying Orders.

Specification.—In that First Lieutenant ——— ———, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, having on December 9, 1915, been duly discharged from attendance as a witness before a court of inquiry in session at the navy yard, ——— ———, with orders from the Secretary of the Navy to proceed to his station, at ———, did neglect and fail to report in obedience thereto until about 4.30 p. m. December 15, 1915; and the said ——— was thereby negligent in obeying orders.

Charge.—Perjury.

(For definition see Naval Digest, 1916, p. 458; see also section 79 and C. M. O. 51, 1914.)

Specification.—In that ——— ———, fireman second class, U. S. Navy, a prisoner in the naval prison, navy yard, ———, ———, having, on February 24, 1915, been duly sworn as a witness before a general court-martial by the president thereof, said court-martial being then convened on board the U. S. S. ———, at ———, ———, did, wilfully and contrary to said oath, testify as follows (*here quote verbatim the testimony containing false statements*), which testimony that (*here quote verbatim the false statement*) was false; whereas, in truth and in fact (*here allege affirmatively what was the truth*); and the said false testimony was known by the said ——— to be false, was material to the issue then and there being tried, and was given with the intent to deceive the said general court-martial.

Specification.—In that Ensign ——— ———, U. S. Navy, while serving on board the U. S. S. ——— at the navy yard, ———, ———, having, on or about March 3, 1914, at his own request, been duly sworn as a witness before a court of inquiry, by the president of said court, the said court of inquiry being then and there convened at the navy yard aforesaid by order of the Secretary of the Navy for the purpose of inquiring into a report made against him, the said ———, by the commanding officer of the U. S. S. ———, and before which said court, he, the said ———, was then and there an interested party, did, then and there, wilfully, falsely, and corruptly, and contrary to said oath, testify in answer to the question asked him, the said ———, by counsel then and there representing the said ———, "Will you state all you know regarding the leather hand-

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bag that has been in the custody of the commanding officer of the ——— since January 28, 1914?" in part as follows: "Among other things about the day before Thanksgiving, I purchased this leather handbag at Madame ———'s, together with several other articles"; which said testimony that stated, "I purchased this leather handbag at Madame ———'s," was false; whereas, in truth and in fact, the said ——— did not purchase the said leather handbag at the said Madame ———'s, or elsewhere at the time aforesaid, or at any other time; and whereas, in truth and in fact, the said ———, had, on or about January 14, 1914, feloniously taken, stolen, and carried away said leather handbag of the value of about ten dollars and eighty-five cents ($10.85), from the stateroom of Ensign ——— ———, U. S. Navy, on board said ship ———, said handbag being the property of ——— ———, boatswain's mate first class, U. S. Navy, and the testimony last aforesaid was then and there known by the said ——— to be false, was material to the issue then and there being inquired into by said court of inquiry, and was given with intent to deceive said court of inquiry.

Charge.—RAPE.

Specification.—In that ——— ———, fireman second class, U. S. Navy, serving on board the U. S. S. ——— at the navy yard, ———, ———, did, between 4.00 and 5.00 p. m. on July 25, 1914, in the said navy yard, near the U. S. S. ———, forcibly make an assault in and upon the body of ——— ———, and did, feloniously and against her, the said ——— ———'s, will, forcibly ravish and carnally and unlawfully know her, the said ——— ———.

Charge.—RESISTING ARREST.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, did, on board said ship, on August 24, 1915, while being lawfully placed in confinement by ——— ———, master at arms first class, U. S. Navy, forcibly resist arrest.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on or about September 25, 1915, at said navy yard, while being lawfully placed under arrest by ——— ———, corporal, U. S. Marine Corps, on duty as corporal of the guard at said barracks, forcibly resist arrest.

Charge.—ROBBERY. (*See* C. M. O. 8, 1913, 6–7.)

Specification.—In that ——— ———, trumpeter, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on or about April 3, 1915, in ——— Creek, near said navy yard,

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with force and violence, feloniously make an assault upon ——— ———, a constable of Beaufort County, in said State, then and there in the execution of his office, and did feloniously rob, steal, take, and carry away from him, the said Constable ———, two barrels of beer, value unknown, lawfully seized and held by him, the said Constable ———, under the laws of the State of ———.

Charge.—Scandalous Conduct Tending to the Destruction of Good Morals. (*See* section 67.)

Specification.—In that Paymaster ——— ———, U. S. Navy, while serving on board the U. S. S. ———, did, on about September 15, 1915, render to the Bureau of Supplies and Accounts, Navy Department, a monthly summary statement for the month ending August 31, 1915, in which he reported that, of the balance due to the United States by him as pay officer of the said ship ———, there was on deposit in the subtreasury under "General account of advances," on August 31, 1915, the sum of twenty-four thousand two hundred and six dollars ($24,206); whereas, on the said date there was on deposit to his credit, in the subtreasury at New York, the sum of seven thousand seven hundred and three dollars and thirty-three cents ($7,703.33), with outstanding checks against that credit amounting to six hundred and twenty-five dollars ($625), and in the subtreasury at San Francisco the sum of thirteen thousand five hundred and eighty-seven dollars and fifty cents ($13,587.50), with outstanding checks against said credit amounting to one thousand seven hundred and sixty-nine dollars and ninety cents ($1,769.90); and, whereas, there remained subject to check by the said ——— in the subtreasury at New York the sum of seven thousand and seventy-eight dollars and thirty-three cents ($7,078.33), and in the subtreasury of San Francisco the sum of eleven thousand eight hundred and seventeen dollars and sixty cents ($11,817.60), making a total amount of only eighteen thousand eight hundred and ninety-five dollars and ninety-three cents ($18,895.93) subject to his check in the aforesaid subtreasuries, the said ——— did, in and by said summary statement, knowingly and wilfully render a false and fraudulent return of balances to his credit in the subtreasuries at New York and San Francisco, as aforesaid.

Specification.—In that ——— ———, boatswain's mate second class, and ——— ———, ordinary seaman, U. S. Navy, serving on board the U. S. S. ———, were, on May 13, 1915, in the ordnance storeroom of said ship, found lying together, each with his person indecently exposed and in contact with that of the other.

Specification.—In that ——— ———, electrician second class, U. S. Navy, having, at some time during June, 1914, exact date un-

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known, while serving on board the U. S. S. ———, then at ———, ———, seduced one ——— ———, an unmarried woman of about eighteen years of age and of previous chaste character, did, on or about November 21, 1914, while serving on board the said ship, then at Norfolk, Virginia, knowingly persuade, induce, and entice the said ——— ——— to go from ———, ———, to ———, ———, with the intent and purpose on his, the said ———'s, part that the said ——— ——— should engage in improper and illicit sexual relations with him, the said ———, and did in furtherance of said purpose then and there send the said ——— ——— a sum of money requisite for and intended for the purpose of procuring a ticket for her transportation from ———, ———, to ———, ———, as a passenger upon a common carrier engaged in interstate commerce, and did then and there, therein and thereby, unlawfully and knowingly cause her, the said ——— ———, to be transported between the places aforesaid as a passenger on a common carrier engaged in interstate commerce for the unlawful purpose aforesaid.

Specification.—In that ——— ———, electrician second class, U. S. Navy, having at some time during June, 1914, exact date unknown, while serving on board the U. S. S. ———, then at ———, ———, seduced one ———, an unmarried woman of about eighteen years of age and of previous chaste character, did, during a period of about two weeks beginning on or about November 21, 1914, while serving on board the said ship, then at ———, ———, unlawfully cohabit and live with as man and wife, and have improper and illicit sexual relations with the aforesaid ———, who was not the wife of the said ———, in a boarding house located at number ——— ——— Street, ———, ———.

Specification.—In that ——— ———, chief electrician, U. S. Navy, serving at the navy yard, ———, ———, did, on or about March 1, 1915, in the city of ——— ———, induce ——— ———, of Norfolk, Virginia, to cash a check drawn by him, the said ———, upon the Bank of Berkley, in the sum of ten dollars ($10); and he, the said ———, well knowing that he did not have at the time of drawing said check sufficient funds in said bank to provide for its payment, did thereafter wholly neglect and fail to provide therefor, and did allow said check, upon presentation at said bank, to be dishonored because of the fact that he, the said ———, had at that time no funds on deposit in said bank.

Specification.—In that ——— ———, chief gunner's mate, U. S. Navy, serving at the navy yard, ———, ———, having between December 3, 1915, and January 1, 1916, become justly indebted to ——— ———, of Norfolk, Virginia, in the sum of twenty-seven dollars and twenty-five cents ($27.25), and having paid to said company on January 25, 1916, the sum of five dollars ($5), and on Janu-

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ary 27, 1916, the sum of four dollars ($4), and being thereafter, to wit, since about January 27, 1916, indebted to ——— ——— in the sum of eighteen dollars and twenty-five cents ($18.25), did, although often requested so to do, neglect and fail, and has ever since neglected and failed, to pay to said company the said sum of eighteen dollars and twenty-five cents ($18.25), due and owing to the said company, or any portion thereof.

Specification.—In that ——— ———, a corporal, U. S. Marine Corps, having, on or about January 30, 1915, while serving as post exchange steward at the United States marine barracks, navy yard, ———, ———, been intrusted, in the post exchange at said barracks, by Captain ——— ———, U. S. Marine Corps, post exchange officer at the said barracks, with a bank check, numbered three hundred eighty one, and dated January 30, 1915, for the amount of two hundred forty-five dollars and sixty-four cents ($245.64), United States money, drawn by the said Captain ———, as post exchange officer, on the National City Bank, ———, ———, from the account therein of the said post exchange, and made payable to the ——— Tobacco Company in payment of the amount due the said ——— Tobacco Company by the said post exchange at said barracks, did, on the date aforesaid and in the post exchange aforesaid, wilfully and feloniously erase and remove from the face of the check aforesaid the name of the said ——— Tobacco Company as payee, and in substitute therefor did wilfully and feloniously, and with intent to defraud, make and forge thereon the name of ——— ——— as payee.

Specification.—In that ——— ———, seaman, U. S. Navy, serving at the United States Naval Training Station at ———, ———, did, on or about October 16, 1915, at the post office at the said training station, knowingly, wilfully, and fraudulently attempt to obtain and receive into his possession from the said post office a registered letter addressed as follows, to wit: "——— ———, U. S. S. ———, ———, ———," and forwarded to said training station, by falsely and fraudulently representing that he, the said ———, was the said ——— to whom the said registered letter was addressed.

Specification.—In that ——— ———, yeoman second class, U. S. Navy, did, on or about November 13, 1915, at the United States Navy recruiting station, ———, ———, while serving on board the U. S. S. ———, at that time loaned by the United States to the Naval Militia of the State of ——— ———, wilfully and unlawfully attempt to bribe ——— ———, chief yeoman, U. S. Navy, serving at the said recruiting station, to procure unlawfully and fraudulently for him, the said ———, in return for and in consideration of the sum of twenty-five dollars ($25) United States money, copies of certain confidential questions then in the lawful custody of Lieutenant Commander ——— ———, U. S. Navy, who was in charge of said re-

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cruiting station, and intended for the examination of Commander ——— ———, Naval Militia, State of ———, in order that he, the said ———, might give the said questions to the said Commander ———, Naval Militia, State of ———.

Specification.—In that ——— ———, landsman for electrician, U. S. Navy, did, on or about December 21, 1915, on board the receiving ship at ———, ———, while serving on board said ship, unlawfully have in his possession one gold watch, of the value of about thirty-five dollars ($35), and one gold chain, of the value of about seven dollars ($7), both the property of ——— ———, seaman, U. S. Navy; and eight dollars ($8) in United States money, the property of ——— ———, electrician third class, U. S. Navy.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on or about June 18, 1915, feloniously take, steal, and carry away from the authorized receptacle for mail to be distributed, in the office of the first sergeant of the first company, at the aforesaid barracks, and with felonious intent did open and take from a letter addressed to ——— ———, private, U. S. Marine Corps, serving at the aforesaid marine barracks, a warrant drawn on the Treasurer of the United States at Washington, District of Columbia, by the Auditor for the Navy, Treasury Department, Washington, District of Columbia, said warrant being a pecuniary obligation of the United States for arrears in pay due the person named therein, as follows: Navy warrant number eight thousand one hundred seventy-seven in favor of ——— ———, private, U. S. Marine Corps, for twelve dollars and ninety-four cents ($12.94), said warrant being drawn on June 4, 1915.

Specification.—In that ——— ———, chief master-at-arms, U. S. Navy, serving on board the receiving ship at the navy yard, ———, ———, did, on or about April 1, 1911, on board said ship, conspire and agree with ——— ———, master-at-arms third class, U. S. Navy, stationed on board said ship, to demand from and cause to be paid to them, the said ——— and ———, by ——— ———, seaman, U. S. Navy, and ——— ———, fireman second class, U. S. Navy, both stationed on board the said ship, and certain other enlisted men, names unknown, stationed on board the said ship, money for the detail and relief of the said ——— and ———, and of the aforesaid other enlisted men as messmen on board said ship.

Specification.—In that ——— ———, chief master-at-arms, U. S. Navy, serving on board the U. S. S. ———, at ———, ———, did, on or about March 31, 1915, on board the said ship ———, inform one ——— ———, seaman, U. S. Navy, stationed on the said ship ———, and then detailed as messman, in effect that if he, the said ———, desired to continue in the detail of messman, as aforesaid,

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he, the said ———, could do so by paying to him, the said ———, the sum of five dollars ($5).

Specification.—In that ——— ———, seaman, U. S. Navy, did, on June 15, 1915, while confined in a cell at the naval prison, navy yard, ———, ———, with the intent of then and there poisoning and killing himself, deliberately and wilfully swallow a small quantity of bichloride of mercury, a deadly poison, and did then and there attempt deliberately and wilfully, in the manner and by the means aforesaid, to take his own life and kill himself.

Specification.—In that First Lieutenant ——— ———, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on or about January 20, 1912, engage in a brawl in a saloon on ——— Street in the said city of ———, and was thereupon publicly arrested by ——— and ——— ———, police officers of said city, and confined in the police station of said city.

Specification.—In that ——— ———, chief quartermaster, U. S. Navy, now serving on board the U. S. S. ———, at the naval station, ———, ———, having become justly indebted to ——— ———, proprietor of the ——— Hotel, ———, ———, in the sum of ninety dollars ($90), did, while stationed on the United States Fish Commission steamer ———, on or about November 1, 1915, in consideration of such indebtedness, make and cause to be delivered to the said ——— ——— a promissory note, in the words and figures following, to wit: "* * *," and the said promissory note having, on December 14, 1915, the date of its maturity, been duly presented for payment at the banking house of ——— and Company, Washington, District of Columbia, by ——— ———, and payment thereon demanded, was protested by ——— ———, a notary public for the District of Columbia, on the ground that the said ——— had no account with the said ——— banking house; and the said ———, well knowing that he did not have at the time of making said note, or intend to have, an account at the said ——— banking house to meet said note at maturity, did, knowingly and wilfully, by false and fraudulent pretense, cause the said worthless promissory note to be accepted by the said ——— in settlement of the indebtedness hereinbefore mentioned.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, did, on or about December 16, 1914, unlawfully and knowingly deposit, or cause to be deposited, in a post office of the United States at Washington, District of Columbia, for mailing and delivery, a certain envelope, to wit: An envelope which then and there bore an uncanceled United States postage stamp and the following address, to wit: "——— ———, ———, ———," and which said envelope then and there contained a certain obscene, lewd,

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and lascivious letter of an indecent character, to wit, a letter in substantially the words, letters, and figures as the following, to wit: "* * *," which said letter was then and there a letter containing lewd, filthy, vile, and obscene language written by the said ——— to the aforesaid ——— ———, as he, the said ———, then and there well knew.

Specification.—In that First Lieutenant ——— ———, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, having been duly designated to perform the duties of the treasurer of the company fund of the marine detachment at said barracks, and, as such, being the custodian of certain moneys, and charged with the duty of disbursing such moneys for the benefit of the enlisted men at said barracks, from time to time, as occasion might require, and it being, as he well knew, a part of his duty as treasurer of the company fund aforesaid, to report to his commanding officer from time to time the condition of said fund, and in making such report to state correctly and truly the total amounts of all disbursements from and out of said fund by him as custodian thereof during the period which had elapsed since the date of his last preceding report, did, under date of February 18, 1915, make and submit to Major ——— ———, U. S. Marine Corps, his commanding officer, a report of the condition of the said company fund at the date of said report in which he, the said Lieutenant ——— ———, stated the total disbursements out of said fund from October 15, 1915, to February 15, 1916, as amounting to the sum of one hundred and thirty-seven dollars and eighteen cents ($137.18), and did, in and by such report, pretend and claim, in effect, that he was, on February 18, 1916, entitled to a credit, as treasurer of said fund, for disbursements to the amount of one hundred and thirty-seven dollars and eighteen cents ($137.18), and that the balance of cash in his hands, as such treasurer, was eighty-three dollars and twenty-three cents ($83.23), and did, in and by such report, further pretend and claim, in effect, that he had, on November 16, 1915, paid to ——— ———, of Philadelphia, Pennsylvania, from and out of said company fund, the sum of seven dollars and fifty cents ($7.50) for an implement known as a "feed cutter," purchased for the use of the enlisted men at said barracks, whereas, in fact, he, the said Lieutenant ——— had not, on the said November 16, 1915, or at any time prior to February 18, 1916, paid to the said ——— ———, from and out of said company fund, and for or on account of the purchase of a "feed cutter," the aforesaid sum of seven dollars and fifty cents ($7.50), or any part thereof, and was not, in fact, entitled to a credit of more than one hundred and twenty-nine dollars and sixty-eight cents ($129.68) for disbursements made by him as treasurer of said fund prior to the

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date of said report, and was, in fact, properly chargeable with a balance of cash in his hands, as such treasurer, amounting to ninety dollars and seventy-three cents ($90.73).

Charge.—Sleeping on Post.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, having, on August 7, 1915, been regularly posted as a sentinel on post number five at said navy yard, did, at about 10.00 p. m. on said date, sleep while on said post.

Charge.—Sleeping on Watch.

Specification.—In that Ensign ——— ———, U. S. Navy, serving on board the U. S. S. ———, then at anchor off ———, ———, having, at or about 4.00 a. m. on June 11, 1915, relieved the officer of the deck and taken over the watch on board said ship, did, between the hours of 5.00 and 6.00 a. m. on said date, sleep while on watch as officer of the deck of said ship.

Charge.—Sodomy.

Specification.—In that ——— ———, boatswain's mate second class, and ——— ———, ordinary seaman, U. S. Navy, serving on board the U. S. S. ———, did, on or about November 13, 1915, in the fore hold of said ship, together and with each other, commit sodomy.

Specification.—In that ——— ———, ship's cook first class, U. S. Navy, serving on board the U. S. S. ———, did, on or about March 3, 1909, in the hold of the said ship, in and upon the body of one ——— ———, seaman, U. S. Navy, attached to said ship, commit sodomy.

Charge.—Stealing Property of the United States Intended for the Naval Service Thereof.

Specification.—In that ——— ——— and ——— ———, privates, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, each and together, on or about January 26, 1915, feloniously take, steal, and carry away from the copper pile in the vicinity of the foundry at said navy yard, a pig of lead weighing one hundred and ninety-three pounds, more or less, of the value of about nine dollars and sixteen cents ($9.16), the property of the

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United States, intended for the naval service thereof, and did then and there appropriate the same to their own use.

Charge.—STRIKING ANOTHER PERSON IN THE NAVY.

Specification.—In that ——— ———, water tender, U. S. Navy, serving on board the U. S. S. ———, did, on or about July 10, 1915, on board said ship, with a wrench, unlawfully and wilfully strike upon the head ——— ———, fireman second class, U. S. Navy, serving on board said ship, thereby inflicting on said ———'s head a wound about one inch and a half in length.

Charge.—THEFT.

(*See* section 80 and C. M. O. 25, 1914, 3–4.)

Specification.—In that ——— ———, ship's cook first class, U. S. Navy, serving on board the U. S. S. ———, did, on or about May 21, 1915, feloniously take, steal, and carry away, from a drawer in the galley of said ship, a gold watch of about sixty dollars ($60) in value, the property of ——— ———, ship's cook fourth class, U. S. Navy, stationed on the said ship, and did then and there appropriate the same to his own use.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on August 15, 1915, feloniously take, steal, and carry away from the locker at said barracks of ——— ———, private, U. S. Marine Corps, serving at said barracks, the sum of one dollar and eighty-nine cents ($1.89), or thereabouts, lawful money of the United States and the property of the said ——— ———, and did then and there appropriate the same to his own use.

Specification.—In that ——— ———, seaman second class, U. S. Navy, serving on board the U. S. S. ———, did, on or about October 24, 1916, feloniously take, steal, and carry away from the pay office on board the said ship a revolver of about four dollars and fifty cents ($4.50) in value, the property of ——— ———, chief yeoman, U. S. Navy, attached to said ship, and did then and there appropriate said revolver to his own use.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on or about September 11, 1915, in the city of ———, feloniously take, steal, and carry away a check for the amount of two hundred and thirty-eight dollars ($238), numbered two hundred and eight and drawn upon the assistant treasurer of the United States, at Philadelphia, Pennsylvania, by Paymaster ——— ———, U. S. Navy, payable to the order of ——— ———, seaman, U. S. Navy, serving on

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board the U. S. S. ———, the said check being the property of the said ———, and at the time aforesaid in the possession of a mail orderly of the said ship ———, one ——— ———, seaman, U. S. Navy; and the said ——— ——— did then and there appropriate the said check to his own use.

Charge.—Threatening to Assault His Superior Officer While in the Execution of the Duties of His Office.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, at Hampton Roads, Virginia, did, on or about April 5, 1915, when brought to the mast by order of the officer of the deck, Lieutenant ——— ———, U. S. Navy, to explain his, the said ———'s absence from anchor watch, say to him, the said Lieutenant ——— ———, "I will get even with you; you can court-martial me if you want to, and I'll fix you," or words to that effect, and did, at the same time and place, turn up his sleeves, clench his fists, and assume a threatening attitude toward his superior officer, the said Lieutenant ———, who was then and there in the execution of the duties of his office.

Charge.—Through Inattention and Negligence Suffering a Vessel of the Navy to be Stranded and Hazarded.

Specification.—In that Captain ——— ———, U. S. Navy, being in command of the U. S. S. ———, the said ship being, on February 26, 1915, under way in the inner harbor of ——— ———, standing out toward the breakwater at the entrance of said inner harbor, was then and there inattentive and negligent in the performance of his duty as commanding officer of said ship in that he did then and there fail personally to superintend the conning of said vessel, in consequence of which inattention and negligence the said ship ——— was stranded on the outer edge of the eastern breakwater, near the entrance of said inner harbor, and was thereby hazarded.

Charge.—Through Negligence Suffering a Vessel of the Navy to be Run upon a Rock and Hazarded.

Specification.—In that Commander ——— ———, U. S. Navy, being in command of the U. S. S. ———, cruising on special service in the ——— Ocean, off the coast of ———, on June 5, 1915, notwithstanding the fact that at about midnight June 4, 1915, the northeast point of ———Island bore abeam and was about six miles distant, the said ship being then under way and making a speed of about ten knots per hour, and well knowing the position of the said ship at the time stated, and that the charts of the locality were unre-

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liable and the currents thereabouts uncertain, did, nevertheless, neglect and fail to exercise proper care and attention in navigating said ship while approaching ——— Island, in that he neglected and failed to lay a course that would carry said ship clear of the last aforesaid island, and to change the course in due time to avoid disaster, in consequence of which neglect and failure on the part of the said Commander ——— ——— the said ship ——— was run upon a rock off the southwest coast of ——— Island, at about 4.45 a. m., June 5, 1915, and hazarded.

Charge.—THROUGH NEGLIGENCE SUFFERING A VESSEL OF THE NAVY TO BE RUN UPON A REEF AND STRANDED.

Specification.—In that Commander ——— ———, U. S. Navy, being in command of the U. S. S. ———, making passage from ——— to ———, on February 2, 1915, did, when about forty-five miles to the northward and eastward of ——— Bank, in the ——— Sea, shape, and did subsequently maintain, a course which lay close to a dangerous reef and cay, surrounded by strong currents well known to exist, and did neglect and fail to exercise proper care and attention in navigating said ship while approaching said reef and cay, in that he neglected and failed to lay a course which would surely carry such vessel clear of said reef and cay, or to change course in due season to avert disaster, in consequence of which neglect and failure on the part of the said Commander ——— ———, the said ship ——— was, at about 6.00 p. m., February 2, 1915, run upon the north end of ——— Bank, in the ——— Sea, in about latitude thirteen degrees thirty-four minutes north and longitude eighty degrees five minutes west, and was stranded.

Charge.—THROUGH NEGLIGENCE SUFFERING A VESSEL OF THE NAVY TO BE STRANDED.

Specification.—In that Lieutenant ——— ———, U. S. Navy, serving as executive officer on the U. S. S. ———, and being, on August 2, 1915, temporarily in command of said ship, making passage from ——— to ———, the weather being foggy, did, nevertheless, neglect and fail to exercise proper care and attention in navigating said vessel while approaching ——— Island, in that he neglected and failed to make allowance for current setting in the direction of the ship's course toward said island, the said ——— well knowing that the tide during the latter part of the passage was running flood, and that said flood tide in that vicinity set to the north with a velocity at times approaching two knots an hour, in consequence of which neglect and failure on the part of said Lieu-

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tenant ———, the said ship ——— was, at about 5.25 p. m., on the day aforesaid, stranded in ——— Bay, ——— Island.

Specification.—In that Commander ——— ———, U. S. Navy, being in command of the U. S. S. ———, on June 18, 1915, said ship being then underway in ——— Bay, near Cape ———, ———, and notwithstanding the fact that said ship was, at or about 2.00 p. m., on the day aforesaid, passing near and in sight of a buoy in said bay, known as ——— Buoy, that the weather was then thick and foggy, that the said ship was making a speed of at least seven knots per hour, and that, as he well knew, on the course said ship was then being steered, Cape ———, which was then hidden by the fog, was right ahead and but about three and one-half miles distant, the said Commander ——— did, nevertheless, neglect and fail to reduce the speed of the vessel, to establish a proper look out, to keep himself duly informed of the soundings, and to change the course of the vessel in due time, in consequence of which negligence on the part of the said Commander ———, as her commanding officer, said vessel was stranded on said cape, at about 2.30 p. m., on the date aforesaid.

Charge.—Treating His Superior Officer With Contempt.

Specification.—In that Ensign ——— ———, U. S. Navy, serving on board the U. S. S. ———, then lying in the harbor of ———, ———, did, on July 17, 1915, while a passenger in the dinghy of said ship, which dinghy was then making passage from the landing in said harbor to said ship, assume control of said dinghy, notwithstanding the remonstrance of Lieutenant ——— ———, U. S. Navy, his superior officer, also serving on board said ship and a passenger in said dinghy; and he, the said ———, did therein and thereby treat with contempt his superior officer, the said ———.

Charge.—Uniting with a Mutiny.

Specification.—In that ——— ———, seaman, U. S. Navy, a general court-martial prisoner at the naval prison, navy yard, ———, ———, did, on or about October 4, 1911, conspire with ——— ———, fireman second class, U. S. Navy, a general court-martial prisoner at the said naval prison, to mutiny against the lawful authority of and escape from the lawful custody of ——— ———, private, U. S. Marine Corps, stationed at the said prison and on duty as sentinel over the said ——— and ———, and to escape from the said naval prison; and in furtherance thereof did, on the date aforesaid, while in building number five, at the navy yard aforesaid, and while in the lawful custody of said private ——— ———, U. S. Marine Corps, unite with said ——— ——— in a mutiny against the

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lawful authority of the said ——— ———, in that he, the said ———, did, then and there, by force and violence, take from the said private ——— a revolver, and did assist the said ——— to escape from the lawful custody of the said ———, and did, then and there, himself escape from the lawful custody of the said ———.

Charge.—Unlawfully Selling Property of the United States Intended for the Naval Service Thereof.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, did, on or about August 24, 1915, while a yeoman third class, on board said ship, sell, without proper authority, about fifteen yards of cap cloth, of the value of about thirty dollars ($30), and about one hundred neckerchiefs, of the value of about fifty dollars ($50), property of the United States intended for the naval service thereof, to ——— ——— and ——— ———, civilians and visitors on board the said ship, and to various other civilians, names unknown, visitors on board said ship.

Charge.—Using a Forged Signature for the Purpose of Obtaining Payment of a Claim Against the United States.

Specification.—In that Passed Assistant Paymaster ——— ———, U. S. Navy, serving on board the U. S. S. ———, having, on or about January 15, 1915, received through the commanding officer of said ship a certificate for the sum of sixty dollars ($60), in payment of an indemnity for loss of clothing, issued by the Auditor for the Navy Department in favor of ——— ———, seaman, U. S. Navy, stationed on said ship, and he, the said ———, well knowing that the said ——— was, at the time of the receipt by him, the said ———, of said certificate, a deserter from the United States naval service, did nevertheless, for the purpose of obtaining allowance in his accounts of the said claim of sixty dollars ($60), by the accounting officers of the Treasury, present, among his official vouchers, the aforesaid certificate, bearing thereon what purported to be the signature of the said ———, he, the said ———, well knowing that the said signature was a forgery.

Charge.—Using Abusive, Obscene, and Profane Language Toward Another Person in the Service. (*See* section 78.)

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on September 26, 1915, while confined in the guard room at said bar-

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racks, say to Corporal ——— ———, U. S. Marine Corps, "(*Allege the objectionable language used*)," or words to that effect.

Charge.—USING ABUSIVE, OBSCENE, AND THREATENING LANGUAGE TOWARD HIS SUPERIOR OFFICER.

Specification.—In that ——— ———, private, U. S. Marine Corps, a patient in the naval hospital, ———, ———, did, on or about May 8, 1915, while being removed by order of Passed Assistant Surgeon ——— ———, U. S. Navy, from one of the wards to another room in said hospital, say to the said Passed Assistant Surgeon ——— ———, U. S. Navy, "(*Allege the objectionable language used*)," or words to that effect.

Charge.—USING ABUSIVE AND PROFANE LANGUAGE TOWARD HIS SUPERIOR OFFICER.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, did, while under sentry's charge on board said ship, on December 19, 1915, upon hearing Lieutenant ——— ———, U. S. Navy, ask the sentry over prisoners who had broken the light in the brig, say to the said Lieutenant ———, U. S. Navy, who was then and there in the execution of his office, "I broke it; and I'd like to break your ——— ——— head," or words to that effect.

Charge.—USING ABUSIVE, PROFANE, AND THREATENING LANGUAGE TOWARD HIS SUPERIOR OFFICER.

Specification.—In that ——— ———, fireman second class, U. S. Navy, serving on board the U. S. S. ———, at the navy yard, ———, ———, did, on February 26, 1915, while receiving treatment in the sick bay of said vessel, say to Assistant Surgeon ——— ———, U. S. Navy, "(*Allege the objectionable language*)," or words to that effect.

Charge.—USING ABUSIVE LANGUAGE TOWARD ANOTHER PERSON IN THE SERVICE.

Specification.—In that Lieutenant ——— ———, U. S. Navy, serving on board the U. S. S. ———, did, on April 6, 1915, in the wardroom of the said ship, say to ——— ———, mess attendant third class, U. S. Navy: "(*Allege the objectionable language*)," or words to that effect.

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Charge.—USING ABUSIVE AND THREATENING LANGUAGE TOWARD HIS SUPERIOR OFFICER.

Specification.—In that ——— ———, seaman, U. S. Navy, did, on February 25, 1915, while a boatswain's mate second class, in the U. S. Navy, and a patient in the United States naval hospital at ———, ———, say to Assistant Surgeon ——— ———, U. S. Navy: "(*Allege the objectionable language*)," or words to that effect.

Charge.—USING OBSCENE AND ABUSIVE LANGUAGE TOWARD ANOTHER PERSON IN THE SERVICE.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on December 21, 1915, say to ——— ———, Sergeant, U. S. Marine Corps, the sergeant of the guard at said barracks, "(*Allege the objectionable language*)," or words to that effect.

Charge.—USING PROVOKING AND REPROACHFUL WORDS, GESTURES, AND MENACES TOWARD ANOTHER PERSON IN THE NAVY.

Specification.—In that Captain ——— ———, U. S. Marine Corps, while serving at the U. S. Marine Corps recruiting office, ———, ———, as officer in charge of the aforesaid recruiting office, did, at about 4.30 p. m. on March 1, 1915, in the said recruiting office and in the presence of ——— ———, a civilian, use provoking and reproachful words, gestures, and menaces toward Acting Assistant Surgeon ——— ———, U. S. Navy, serving at the recruiting office aforesaid, by shaking his fist in the face of the said ———, and saying to him: "That thing there reported me. That sneak is watching me and just waiting to report me for drinking," the words "that thing there" and "that sneak" meaning and intending to refer to the said ———.

Charge.—USING THREATENING LANGUAGE TOWARD HIS SUPERIOR OFFICER.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, at ———, ———, did, on September 17, 1915, while a general court-martial prisoner under sentry's charge on board said ship, use threatening language in speaking to and about ——— ———, chief boatswain's mate, U. S. Navy, also stationed on board the said ship, saying, "I can lick you now; if you report me, I'll lick you sooner or later," and "If he reports me, I'll get square with him; I'll kill him," or words to that effect.

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Charge.—Violation of a Lawful General Order Issued by the Secretary of the Navy.

Specification.—In that Captain ——— ———, U. S. Navy, being in command of the U. S. S. ———, having received a lawful general order, issued on February 10, 1915, by the Secretary of the Navy, announcing to the Navy the death at Washington, District of Columbia, on the morning of that day, of ——— ———, and having caused said order to be publicly read to the officers and crew of said ship on February 14, 1915, the said Captain ——— well knowing that said order required all officers of the Navy and Marine Corps to wear the badge of mourning for a period of thirty days from and after the date of its receipt, did wilfully neglect and fail to wear the badge of mourning during a period of thirty days immediately following the date of the publication by him of said order as aforesaid.

Charge.—Violation of a Lawful Regulation Issued by the Secretary of the Navy. (*See* section 66.)

Specification.—In that Captain ——— ———, U. S. Navy, being in command of the U. S. S. ———, having, on April 22, 1915, had referred to him by the Bureau of Navigation, Navy Department, a copy of a letter which had been received by said bureau from Captain ——— ———, U. S. Navy, commandant of the naval station, ———, ———, as follows: "* * *;" and having been called upon by said bureau for an explanation of the facts mentioned in the said letter of the commandant of the naval station aforesaid, did, on April 27, 1915, address a communication to the commandant of the said naval station in the words and figures following: "* * *;" in which said letter he, the said Captain ———, did express an opinion upon and impugn the motives of the said Captain ———.

Specification.—In that Captain ——— ———, U. S. Navy, being in command of the U. S. S. ———, did, on or about October 20, 1915, write a certain letter, with a view to its publication, of and concerning public work theretofore performed at the navy yard, ———, ———, and of and concerning officers of the line, medical and pay corps of the Navy, and did procure and cause the said letter to be published on December 20, 1915, in the ———, a public newspaper published at ———, ———, in the words and figures as follows: "* * *;" the said ——— well knowing that said letter had in view the censure of officers on duty in said navy yard, and of officers of the line, medical and pay corps of the Navy.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, did, on

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or about October 16, 1915, in ———, ———, knowingly and unlawfully, and without competent authority, pledge to ——— ———, a merchant at number ——— ——— Street, ———, ———, the following articles of clothing lawfully furnished by the United States to the said ——— as a part of his, the said ———'s, prescribed uniforms and outfit, for the amounts in United States money hereinafter stated, to wit: One overcoat for two dollars ($2), one flannel shirt for one dollar ($1), and one pair of russet shoes for one dollar and seventy-five cents ($1.75), which said amounts as above set forth he, the said ———, did receive into his possession and apply to his own use and benefit.

Specification.—In that Pay Clerk ——— ———, U. S. Navy, while serving on board the receiving ship at the navy yard, ———, ———, as clerk to Passed Assistant Paymaster ——— ———, U. S. Navy, then pay officer of said receiving ship, having, on or about April 5, 1916, become cognizant of the fact that there was a deficiency of about four hundred dollars ($400) in the cash on hand, lawful money of the United States, intended for the naval service thereof, which said sum of four hundred dollars ($400) the said ——— had, between December 1, 1915, and the date first aforesaid, received into his possession, custody, and control, as pay clerk as aforesaid for the said Passed Assistant Paymaster ———, for lawful disbursement, in the name of and in behalf of the said Passed Assistant Paymaster ———, and for which said sum of four hundred dollars ($400) the said ——— was responsible, he, the said ———, did, on board said ship, on or about April 5, 1916, neglect and fail to report to proper authority the aforesaid deficiency.

Charge.—Wilful Destruction of Public Property.

Specification.—In that ——— ———, private, U. S. Marine Corps, serving at the marine barracks, navy yard, ———, ———, having, on or about September 25, 1915, been placed in confinement in the prison at said barracks, did wilfully break the glass in the window of the cell in which he was confined.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, while under sentry's charge on board said ship, did, on December 9, 1915, wilfully tear down the wire guard or shield around the electric light in the brig of said ship.

Specification.—In that ——— ———, seaman, U. S. Navy, serving on board the U. S. S. ———, while under sentry's charge on board said ship, did, about noon on December 19, 1915, wilfully throw a shoe at the electric light in the brig of said ship, thereby breaking said light.

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Charge.—WRONGFULLY AND KNOWINGLY DISPOSING OF ARMS AND EQUIPMENT, THE PROPERTY OF THE UNITED STATES, FURNISHED AND INTENDED FOR THE NAVAL SERVICE THEREOF.

Specification.—In that ——— ———, private, U. S. Marine Corps, did, on May 1, 1910, while serving at the marine barracks, navy yard, ———, ———, wrongfully and knowingly, at the aforesaid navy yard, by sale to one ——— ———, a civilian, dispose of one bayonet and scabbard, of the total value of about two dollars ($2), property of the United States, intended for the naval service thereof, which had been furnished to him, the said ———, for use in the said service.

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VII.

INSTRUCTIONS CONCERNING THE MANNER OF MAKING UP RECORDS.

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INSTRUCTIONS CONCERNING THE MANNER OF MAKING UP RECORDS.

82. To be typewritten.—Except under extraordinary and unusual conditions of service, records of all courts and boards shall be typewritten.

83. How the record is made up and bound.—The record shall be typewritten on the paper known as typewriter cap (I 5311(2)), 8 by 13 inches in size. But one side of the paper shall be used, leaving a margin of 1 inch on each side and 2½ inches at the top of each leaf. Each page shall be numbered in the middle of the margin at the lower edge. In making up the record it sometimes happens that the pages are not numbered consecutively, as, for example, where a page is inserted and numbered 73–a, 360½, etc. Where this occurs a notation shall be placed at the bottom of the preceding page calling attention to this fact, as, for example, "next page numbered 73–a," or "next page numbered 360½," etc. When the conditions mentioned in section 82 render it necessary that the record be written in longhand, the same size paper (8 by 13 inches) shall be used and, as in the case of the typewritten record, but one side of the paper shall be used; the penmanship must be clear and legible and the record free from erasure or interlineation except as authorized in the following sections. Before the record is forwarded to the convening authority all pages, documents, and exhibits must be securely bound together by at least two through fasteners at the top margin, the heads of the fasteners uppermost; and care shall be taken to see that the fasteners are through each page, document, and exhibit. Should the exhibits be objects that do not permit of being secured in the manner indicated, they shall be otherwise attached to the record so as to prevent the possibility of loss, or, if necessary, forwarded under separate cover.

84. Order in which documents are appended—Numbering and marking of pages and documents.—In making up records, each document or exhibit shall be prefixed or appended, as may be required, in the precise order in which it is introduced. All papers of a similar character, such as reports on fitness, communications regarding in-

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debtedness, medical surveys, etc., shall be arranged together in chronological order with the earliest coming first. All documents other than instruments of evidence shall be marked with capital letters, as "A," "B," "C"; instruments of evidence shall be marked "Exhibit No. 1," "Exhibit No. 2," etc. When a single document or instrument of evidence is more than one page in length, each page thereof must be marked, for example "A (1)," "A (2)," etc., "Exhibit No. 1 (1)," "Exhibit No. 1 (2)," etc. All such marks must be boldly and distinctly made and placed in the lower right-hand corner of the page or sheet. All copies of documents which may be appended to the record shall be certified "A true copy" by the judge advocate or the recorder.

85. Cover sheets.—A neat cover sheet shall be prefixed to the whole record, following the standard forms given under the procedure of the various courts and boards. At the end of the record, following all appended documents, there shall be attached one or more blank sheets to provide for the action of higher authorities, and to act as a protection to the record. The date on the front cover sheet shall be the date when the court or board first convenes for the case in question.

86. Modifications of precept.—The modifications of the precept, or convening order, are those which are signed and issued by the convening authority, and they must not be confused with the personal individual orders to officers to perform the duty on the court or board, which are issued separately by the Bureau of Navigation, commandant of the Marine Corps, or convening authority, as the case may be. These modifications of the precept must appear as a part of every record where changes have been made in the composition of the membership.

87. In case of absence of members.—In case of absence on authorized leave or on other duty, a copy of the orders permitting or directing the absence of such member must be appended. In case of unauthorized absence, the statement of the absent member with regard to his absence must be appended.

88. Manner in which corrections are to be made.—If corrections should be necessary they shall, where made, be initialed by the judge advocate or the recorder. An undue number of corrections, or a lack of neatness in making them, will be sufficient cause for returning a record for rewriting.

89. When a witness corrects his testimony.—The following instructions will be observed whenever a witness corrects or amends his testimony:

(*a*) In every case the original testimony must remain in the record as originally given.

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(*b*) Inclose in parentheses, *in red ink*, that portion of the original testimony that has been corrected or amended by the witness.

(*c*) In the left-hand margin of the record, opposite the original testimony—inclosed in parentheses, as directed in (*b*)—enter, *in red ink*, a note referring to the page of the record where the correction to testimony is to be found. For example, "See correction, page ——." *Or*,

(*d*) Where corrections are short, inclose the original testimony in parentheses—as directed in (*b*)—and enter the correction, *in red ink*, above the original testimony which it corrects.

(*e*) Typographical corrections in testimony will be made in red ink and initialed by judge advocate or recorder.

90. Accused entitled to a copy of the record of a general court-martial.—See sections 366–369.

91. Index for lengthy cases.—If a court-martial record, or that of a court of inquiry, investigation, or board of investigation, exceeds 20 pages in length, it shall be preceded by an index showing upon what page each step of the trial (investigation) and of the examination of the several witnesses, designating them by name, may be found; also, in case a witness corrects his testimony the index shall show the pages where such correction may be found. There shall also be an index of exhibits offered and received in evidence, giving a brief description of the document, etc., and at what page of the record it was admitted in evidence. This index shall be in the following form:

Q_____ R. S_____,

Seaman, U. S. Navy.

Trial by general court martial at_____

INDEX.

Organization of court_____page
Introduction of counsel_____ "
Reporter sworn_____ "
Challenge, right accorded_____ "
Members of court and judge advocate sworn_____ "
Arraignment_____ "
Plea_____ "
Adjournments_____ "
Prosecution rests_____ "
Defense rests_____ "
Finding_____ "
Sentence (or acquittal)_____ "

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TESTIMONY.

Name of witness.	Direct and redirect.	Cross and recross.	Court.	Corrected.
Prosecution:				
A..... B. C....., &c., etc.....	4-7, 11	7-11, 12	13-14	49
Defense:				
D..... E....., &c., etc.....	94-102, 114	102-113, 115	.....	193

EXHIBITS.

Exhibit No.	Character of—	Admitted in evidence.
1	Letter from .... to accused.....	35
2	Finger prints of accused.....	96
3	Knife (forwarded under separate cover).....	172
4	Finger prints taken from knife.....	187

The index should precede the case, and therefore be the first paper beneath the cover.

92. Reading of papers.—Where the record states that a paper, document, or testimony was read, it is to be understood that it was read *aloud*.

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VIII.

OUTLINE OF THE RULES OF EVIDENCE—THE ATTENDANCE AND EXAMINATION OF WITNESSES.

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OUTLINE OF THE RULES OF EVIDENCE—THE ATTENDANCE AND EXAMINATION OF WITNESSES.

93. Evidence defined.—Evidence is that which tends to prove or disprove any matter in question or to influence the belief respecting it. (Bouvier, 701.) The word "evidence," in legal acceptation, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. (1 Greenl., 3.)

94. Twofold duty of members of courts martial in regard to evidence.—Members of courts martial, in their capacity as judges, must pass upon the admissibility of evidence; and, as jurors, weigh it.

95. Rules of evidence governing naval courts and boards; how determined.—No statute lays down the rules of evidence to govern naval courts and boards. The rules governing such are made by the Navy Department and are published herein and in court-martial orders. These rules, in so far as the naval service is concerned, have the force of law and are binding upon naval courts and boards.

If a question of evidence which can not be determined by a reference to the above rules confronts a court, it should then look to the rules of evidence applied by the Federal courts and follow the same if applicable. (See C. M. O. 51, 1914, 7–8.) If not, the court, in the absence of an authoritative rule on any specific point, should apply, as far as possible, the fundamental principles of evidence and the dictates of reason and justice in determining the particular point at issue, and may thus arrive at its conclusion with the assurance that the chance of error is reduced to a minimum.

96. Forms of evidence.—In addition to the testimony of living witnesses, evidence may include *written evidence* and *real evidence.*

Written evidence consists of documents, either under seal or otherwise.

Real evidence consists of any objects or articles submitted in open court for examination by the court and by the witnesses who may identify them or illustrate their application.

97. Nature of evidence.—Evidence may be either *direct* or *circumstantial.*

Direct evidence is that kind which bears directly on the issue.

Circumstantial evidence is that kind in which the existence of certain facts is to be inferred from the existence or nonexistence of other facts established in evidence.

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98. Degree of evidence.—The terms *prima facie* and *conclusive* are used to refer to the degree of evidence.

Prima facie evidence is such evidence which, on first sight, creates a belief not only in the possibility of a certain fact, but in its actual existence beyond a reasonable doubt; and the effect of such evidence is, in the eye of the law, sufficient to establish such fact, if not rebutted.

Conclusive evidence is such evidence as to exclude the possibility of any conclusion to the contrary of the one it is introduced to establish.

99. The subject of evidence—How divided.—The subject of evidence will be here considered under the following heads:

I. Proof in general.
II. Admissibility of evidence.
III. Testimony.
IV. Documentary evidence.
V. Evidence in general.

I. Proof in General.

100. Under the head of "Proof in general," it is necessary to consider:

(1) What is to be proved.
(2) Degree of proof required.
(3) Presumptions.
(4) Judicial notice.
(5) Admissions in open court.

(1) What is to be proved.

101. What is to be proved.—In a trial by court-martial the prosecution must establish (*a*) that the act charged was committed; (*b*) that the accused committed it; and (*c*) that he did so with "criminal intent."

102. Proof of the commission.—The *corpus delicti*, so called, or the fact that the alleged criminal act was committed by some one, is a separate fact to be proved. Proof of a confession does not prove the *corpus delicti*, but the latter must be independently proved before evidence of the confession can be admitted. The rule with regard to proof of the *corpus delicti*, apart from the mere confession of the accused, proceeds from the reason that the general fact without which there could be no guilt, either in the accused or in anyone else, must be established before anyone can be convicted of the perpetration of the alleged criminal act which caused it; as, in cases of homocide the death must be shown, in theft it must be proved that the goods

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were lost by the owner, and in arson that the house had been burned; for otherwise the accused might be convicted of murder when the person alleged to be murdered was alive, or of theft when the owner had not lost the goods, or of arson when the house was not burned. But where the general fact is proved the foundation is laid and it is competent to show by any legal and sufficient evidence how and by whom the act was committed, and that it was done criminally. (See C. M. O. 26, 1910, 10.) In many court-martial cases an omission, not an act of commission, constitutes the offense charged.

103. Proof of the agency and identity of the accused.—This, as an independent fact, is material in cases in which the offense in question might have been committed by more than one person. In the case of some of the offenses against naval law, as desertion, drunkenness on duty, etc., the agency of the accused is so connected with the act done that proof of the latter is also proof of the former.

104. Proof of intent.—Proof of "criminal intent" does not necessitate showing that there was an intention to commit crime. The law presumes that a man intends the natural and probable consequences of his voluntary acts. Therefore, an intention, on the part of one capable of entertaining intent and acting without justification, to do a prohibited act, constitutes "criminal intent." Also, if a person, intending to commit one act, wrongful in itself, commits instead a different criminal act, the law construes therefrom a "criminal intent." When a negligent act or culpable omission is charged, the "criminal intent" consists in the state of mind which necessarily accompanies such act or omission.

The above constitutes a *general intent* and is sufficient for all crimes in which the intent is not an essential ingredient of the offense. This latter constitutes a *specific intent* and must be proved with particularity. (See C. M. O. 25, 1914, 3; 29, 1914, 9; 41, 1914, 3; 31, 1915, 14–16; 17, 1916, 8.)

(2) DEGREE OF PROOF REQUIRED.

105. Proof beyond a reasonable doubt.—In a criminal case—and all court-martial procedure is of such character—the burden of proof rests upon the prosecution to establish the guilt of the accused. A rule of criminal evidence requires that this be established beyond a reasonable doubt. This burden upon the prosecution gives rise to what is called a "presumption of innocence" in favor of the accused, a presumption which should dispel from the minds of the court any suspicion arising from the fact that an accused has been under charges and put the court on notice that it must reach its conclusion solely from the legal evidence adduced.

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106. Reasonable doubt.—By reasonable doubt is meant "an honest, substantial misgiving generated by insufficiency of proof. It is not a captious doubt, not a doubt suggested by the ingenuity of counsel or jury and unwarranted by the testimony, nor is it a doubt born of a merciful inclination to permit the defendant to escape conviction nor prompted by sympathy for him or those connected with him." (U. S. *v.* Newton, 52 Fed. Rep., 290.) "Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of a mistake." (U. S. *v.* Youtsey, 91 Fed. Rep., 868.) A "moral certainty" of guilt persuaded by the proof calls for conviction. When such has been established, a court can no more properly acquit than could it convict when there has been an insufficiency of proof. (See C. M. O. 19, 1915, 6–7.)

(3) PRESUMPTIONS.

107. Presumptions.—A presumption is a rule of law annexing to certain evidential facts a legal significance. Such presumptions are of two kinds, according to the legal significance attached, namely, (*a*) *rebuttable* presumptions and (*b*) *conclusive* presumptions.

108. Rebuttable presumption is an assumption made by law that an inference of fact is *prima facie* correct. This presumption places the burden of rebuttal upon the party against whom it operates. In the absence of evidence to the contrary the law presumes that:

(*a*) A person owns the property which is in his possession.

(*b*) A person between the age of 7 and 14 is incapable of entertaining criminal intent and, therefore, incapable of committing crime.

(*c*) A person is sane.

(*d*) A promissory note has been issued on valuable consideration.

(*e*) There is identity of person from identity of name (depending upon the circumstances).

(*f*) When an instrument is 30 years old the party whose signature appears thereon duly signed it.

(*g*) A person who has not been heard from in seven years is dead.

(*h*) A letter duly directed and mailed was received in the regular course of the mail.

(*i*) Official duty has been regularly performed.

(*j*) When a man and woman have lived together as husband and wife and have been commonly reputed as such they have been properly married.

(*k*) A child born of a married woman during wedlock is legitimate.

(*l*) An unlawful act was done with unlawful intent.

(*m*) A publication purporting to have been printed or published by public authority was so printed or published.

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(*n*) A publication purporting to contain reports of cases adjudged in judicial tribunals of the place where published contains correct reports of such cases.

109. Conclusive presumption is an assumption made by law that an inference of fact is conclusively correct. It forbids of any evidence being introduced to the contrary. The law, for example, conclusively presumes that a child under 7 years of age is incompetent to commit crime. Strictly speaking, presumptions of this class are not presumptions at all but matters of substantive law. As such they do not belong to the subject of evidence.

(4) JUDICIAL NOTICE.

110. Judicial notice.—By judicial notice is meant the acceptance by courts of a fact as being true without proof. Courts should take judicial notice of (*a*) notorious matters of general knowledge such as every one is presumed to know, and (*b*) matters of a public character so intimately connected with the exercise of the judicial function that courts are presumed to be acquainted with them. Under (*a*) it has been held, for example, that a court should have taken judicial notice of the fact that Wilkes-Barre, Pa., is approximately 400 miles from Boston, Mass., a distance which would require at least seven hours to cover (C. M. O. 14, 1914, 4); also that it is customary in business transactions to include the agreement as to interest in the body of a negotiable instrument (C. M. O. 27, 1913, 7). Under (*b*) courts-martial should take judicial notice, *inter alia*, of the Constitution, public statutes of the United States when produced from authorized editions of books, proclamations, the power of the President and the executive departments, matters of public history, the Navy Regulations, general orders and circulars of the department, court-martial orders, and authorized publications of the department, such as Landing Force and Small Arms, Ship and Gun Drills, etc. (See C. M. O. 23, 1911, 3; 49, 1915, 13.) Matters of which courts may take judicial notice need neither be charged nor proved. (See C. M. O. 4, 1916, 3.)

(5) ADMISSIONS IN OPEN COURT.

111. Admissions in open court.—An admission in open court, when such admission is voluntarily made by the accused or by his counsel in his presence and with his express or implied authority, is a judicial confession of the matter admitted and dispenses with the necessity of evidence to establish same. (See C. M. O. 5, 1917, 6–7.)

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II. Admissibility of Evidence.

(1) GENERAL RULES.

112. Evidence must be relevant.—It is a primary rule that evidence, to be admissible, must be relevant; that is, it must be logically relevant to prove or disprove the issue.

113. Best evidence required.—It is a rule of evidence that the best evidence must be introduced of which the nature of the case is susceptible. This rule does not mean that circumstantial evidence which is relevant may not be introduced to corroborate direct evidence. Nor does it require that evidence be cumulative on any point. It refers rather to the quality of proof and requires that a fact be established by the most reliable evidence available. An attempt to prove a fact by evidence which by its very nature clearly indicates that it is merely a substitute for better evidence is open to objection. Thus, the best evidence of the contents of a letter would be the letter itself, and ordinarily oral testimony would not be admissible on this point. (See sec. 190.)

(2) HEARSAY RULE AND EXCEPTIONS.

114. Hearsay rule.—Hearsay is evidence, not of what a witness knows himself, but which rests, in part at least, upon the credibility of others. The term may be used with reference to that which is written as well as that which is spoken. The general rule is that hearsay evidence is not admissible.

115. Why hearsay evidence is objectionable.—Hearsay evidence is objectionable, first, because it is not original evidence; second, the real witness is not testifying in court under the sanction of an oath; and, third, the accused has no opportunity to be confronted with the witness against him or to exercise his right of cross-examination.

116. Hearsay evidence not to be confused with literal acceptation of word "hearsay."—It does not necessarily follow that all evidence in respect to what a witness has "heard" is hearsay. Such evidence may constitute original facts, directly bearing on the issue, and as such be original. For example, when an accused is charged with having spoken certain words, the testimony of a witness to the effect that he had heard the accused speak the words in question is original and not hearsay evidence. So also a writing may be "hearsay" if offered to prove the facts stated therein, and yet be admissible if offered for another purpose. For example see section 200.

117. Res gestae.—Another form of declaration of a third person which is admissible as original testimony is that which forms a part of what is legally known as the *res gestæ*. By this term is meant

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"the circumstances and occurrences attending and contemporaneous with the principal fact at issue, or so nearly contemporaneous with it as to constitute a part of the same general transaction, which explain and elucidate such fact by indicating its nature or motive." (Winthrop, 492.) No rule can be laid down which will be an exact guide as to what is and what is not a part of the *res gestae*. But declarations offered in evidence as *res gestae* must be shown to be voluntary and spontaneous, to spring out of the principal fact, and, while it is not necessary that they be precisely coincident with the main fact, they must be shown to be so closely related to it as to preclude the idea of deliberate design. (15 S. W., 642.)

118. Exceptions to rule excluding hearsay.—There are certain exceptions to the rule excluding hearsay, of which the principal ones likely to be met in the administration of naval law are (1) dying declarations in homicide cases, and (2) confessions and admissions.

119. Dying declarations in cases of homicide.—"Under indictments for murder and manslaughter, the law recognizes an exception to the rule rejecting hearsay, by allowing the dying declarations of the victim of the crime, in regard to the circumstances which have induced his present condition, and especially as to the person by whom the violence was committed, to be detailed in evidence by one who has heard them. It is necessary, however, to the competency of testimony of this character—and it must be proved as preliminary to the proof of declaration—that the person whose words are repeated by the witness should have been under a sense of impending death; though it is not necessary that he should himself *state* that he speaks under this impression, provided the fact is otherwise shown. It is no objection to testimony of this character that such declarations were brought out in answer to leading questions, or upon urgent solicitations addressed to him by any person or persons; and if, instead of speaking, he answered the questions by intelligible signs, these signs may equally be testified to. It is to be remarked that evidence of dying declarations, made, as such usually are, under circumstances of mental and physical depreciation, and without being subjected to the ordinary legal tests, is generally to be received with great caution." (Winthrop, 493–494; see on this subject C. M. O. 26, 1911, 3; see also C. M. O. 49, 1915, 14.)

120. Confessions and admissions.—Subject to certain conditions, confessions are admissible in evidence. First, the confession must be voluntary, and anything that will tend to show that a confession was extorted by threats or promises, or by the use of force, especially by one in authority, will destroy its value as evidence. The reason behind this rule is the exclusion of confessions which were made under such conditions that the party may have been influenced to make an

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untrue one. Evidence may be introduced to establish the conditions under which a confession was made, and where facts shown by preliminary examination are conflicting the question of whether the confession was voluntary is for the court to decide. The burden is upon the side wishing to introduce a confession to show that it was voluntarily made. For example of a confession held to have been involuntary see C. M. O. 47, 1910, 6 and 7, 1914, 14; of one held to have been voluntary, see C. M. O. 7, 1914, 13–15. Secondly, before a confession can be admitted in evidence in a case to which the doctrine of *corpus delicti* applies, the *corpus delicti* must be proved. (See sec. 102; see also C. M. O. 26, 1910, 9–10.) See on this subject, in addition to the citations already quoted herein, C. M. O. 5, 1913, 8–9; 51, 1914, 3; 10, 1915, 4–5; and 3, 1916, 6–7.

An admission, which is less than a confession in that it admits merely something relevant to the issue and does not confess the main fact sought to be proved, may be received in evidence without first being shown to have been voluntarily made.

III. Testimony.

121. Under the head of "Testimony," it is necessary to consider:
(1) The attendance of witnesses.
(2) The competency of witnesses.
(3) The examination of witnesses.
(4) Testimony by deposition.

(1) THE ATTENDANCE OF WITNESSES.

122. Summoning witnesses.—The judge advocate shall summon as witnesses such persons whose testimony is necessary to a trial, whether for the prosecution or the defense; but he shall not, *except as hereinafter provided*, summon any witness at the expense of the United States.

The written instrument that serves to summon a witness who is in the naval or military service is termed a *summons;* a witness who is not in the service, a *subpœna.* (For forms see pp. 373–374.)

123. Witness who is in naval or military srvice.—When it is desired to summon a witness who is in the naval or military service the summons shall, whenever possible, be forwarded through official channels.

When such a witness is not present at the station where the court-martial is convened and his attendance would involve travel at Government expense the judge advocate shall forward the summons seasonably to the convening authority, stating:

(1) The necessity for the testimony of the person to be summoned; that is, a synopsis of the testimony which it is expected the witness will give.

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(2) Whether the testimony it is expected the witness will give is, in the opinion of the judge advocate, material and necessary to the ends of justice.

(3) Whether the witness is summoned for the prosecution or for the defense.

The above statement should be accompanied by a request that the summons be transmitted to the person named therein for compliance.

In urgent cases, but in none other, a request for the attendance of such witness may be made by telegraph.

If the witness requested be an officer under the command of the convening authority, the latter will, if the circumstances warrant, issue written orders to such officer to appear before the court as requested and direct the necessary travel.

If the witness requested by an enlisted man under the command of the convening authority, the latter will, if the circumstances warrant, approve the summons and forward the same, through official channels, to such enlisted man. The actual expenses only of enlisted men summoned as witnesses shall be paid and shall be provided by the pay officer upon order of the commanding officer of the ship or station to which they belong.

If the witness requested be not under the command of the convening authority, the latter will, if the circumstances warrant, transmit the summons, with the information above mentioned, to the Secretary of the Navy.

A naval or military witness, summoned as above, shall report to the president of the court upon his arrival in obedience to the summons, and it shall be the duty of the president to arrange for Government quarters and subsistence, if available, for such witness, if an enlisted man, during his attendance at the trial.

124. Civilian witness.—As the powers of a naval general court-martial (or court of inquiry) in connection with issuing processes to compel civilian witnesses to appear and testify, see sections 11 and 12 of the act of February 16, 1909 (35 Stat., 621), quoted under article 42 of the Articles for the Government of the Navy (p. 41).

The judge advocate is authorized to subpœna as a witness any civilian who is to be a material witness as to *facts*, and who is within the State, Territory, or district in which a naval court sits and can compel attendance. For manner of service see sec. 129.

The judge advocate is not authorized to subpœna as a witness, at the expense of the United States, any civilian who is not within the territorial limits in which the court can compel attendance, even though such witness be considered a material one and be willing to attend. In such cases the judge advocate shall forward the subpœna to the Secretary of the Navy, together with the information, and in the manner, required when forwarding a summons for a naval wit-

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ness who is not present at the station where the court-martial is convened (see sec. 123). (For form of subpœna to be used in such cases, see p. 374.)

See, in this connection, section 422.

125. Witnesses as to character or as experts not to be summoned or subpœnaed at Government expense. —The general rule is that witnesses will neither be summoned nor subpœnaed at Government expense when it does not appear that any such witness has personal knowledge of the facts at issue before the court, but merely that their testimony is desired either as to character or as experts.

The best evidence as to the character of an accused is his official record, which is always forwarded to the judge advocate for use in connection with the case.

Where a staff officer is tried by general court-martial it is deemed proper that at least one-third of the court be composed of officers of the same corps as the person to be tried. (Sec. 221.) Such members of the court may themselves qualify as experts concerning matters pertaining to the duties of their corps and testify accordingly either for the prosecution or the defense. Under no circumstances will the department approve the summoning from other stations, at Government expense, of officers to give expert testimony, either for the prosecution or the defense, when there are other officers on duty at the place of the trial whose service should render them fully competent to give such testimony. (See C. M. O. 1, 1914, 6–7.)

126. Witnesses for the defense.—The accused is, in general, entitled to have all the material witnesses for his defense summoned, except when their testimony would be merely cumulative and evidently add nothing to the strength of his case. As far as possible he should be allowed a full and free defense, as the least denial to him of any proper facility, opportunity, or latitude for it may serve to defeat the ends of justice.

127. List of witnesses.—The judge advocate shall, prior to the trial if practicable, call upon the accused for a list of the witnesses he wishes summoned for the defense, and shall at the time furnish him with a list of the witnesses who are to appear against him. It is to be understood, however, that neither party is precluded thereby from calling further witnesses whose attendance may, during the course of the trial, be found necessary to the proper administration of justice.

128. Court may direct the summoning of witnesses.—While the court can not legally originate evidence—that is, take the initiative in providing any part of the proofs—yet, where, with a view to a more thorough investigation of the case, it desires to hear certain evidence not introduced by either party, it may properly call upon the judge advocate to procure the same, if practicable, adjourning for a reasonable period to allow time for the purpose. New testimony thus

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elicited must, of course, be received subject to cross-examination and rebuttal by the party to whom it is adverse. (C. M. O. 19, 1915, 3.)

129. Service of a subpœna.—The judge advocate shall prepare duplicate subpœnas for such civilian witnesses as he may desire to call. Service is made by a personal delivery of the duplicate subpœna to the witness, and proof of service by returning the original to the judge advocate properly indorsed and sworn to by the person who serves the subpœna. (See p. 377.) Any person, duly instructed to do so, may serve the subpœna, but the service must be personal.

If the desired witness lives near the place where the court is convened, and within the territorial limits in which the court can compel attendance, the subpœna may be served by the judge advocate, provost marshal, or by any other person instructed to do so. If the residence of the witness is not near at hand, but within the territorial limits in which the court can compel attendance, the president of the court shall address a letter to the commandant or senior officer present, requesting that a person be designated to proceed to such place named as the desired witness may be for the purpose of serving the subpœna, and further requesting that the necessary transportation and subsistence be furnished. The proper pay officer should then be directed to furnish same. If the witness is beyond the territorial limits within which the court can compel attendance, the necessity for personal service no longer exists. In such case delivery may be made by such method as may be most practicable.

130. When subpœna is disregarded.—In case a civilian, duly subpœnaed before a general court-martial or court of inquiry, wilfully neglects or refuses to appear or qualify as a witness or to testify or produce documentary evidence as required by law, he shall at once be tendered or paid, in the manner prescribed in section 132, one day's fees and mileage for the journey to and from the court (as allowed by sec. 132), and shall thereupon be again called upon to comply with the requirements of the law. For the further procedure to be taken in the event that a witness persists in refusal to attend, see sections 11 and 12 of the act of February 16, 1909, 35 Statutes, 622, quoted under article 42 of the Articles for the Government of the Navy, and see also pages 381–392. The fees and mileage of civilian witnesses residing beyond the territorial limits within which the court can compel attendance shall not be paid in advance, as such witnesses can not be punished if they disregard a subpœna.

131. Warrant of attachment.—In order to compel the appearance of a civilian witness in certain exceptional cases, under the circumstances hereinafter set forth, it may become desirable to resort to a warrant of attachment, based upon the authority of the sections of the act of February 16, 1909, referred to in the preceding section.

In such cases the proper procedure for accomplishing the above purpose is as follows. The president of the court will issue a warrant

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of attachment (p. 377), directing and delivering it for execution to an officer designated for that purpose, generally the provost-marshal of the court. He will also deliver to this officer the subpœna, indorsed with affidavit of service (to be returned when the warrant is executed), and a certified copy of the order appointing the court-martial. A warrant, or writ of attachment, does not run beyond the State, Territory, or District in which the court-martial sits.

In executing such process it is lawful to use only such force as may be necessary to bring the witness before the court. Whenever force is actually required, the senior officer present, or other officer designated by the convening authority, nearest the witness's residence will furnish a detail sufficient to execute the process. The use of this procedure, however, should be resorted to only when the ends of justice absolutely demand it, when all other means have failed, and only *upon the authorization of the Secretary of the Navy.*

132. Fees of civilian witnesses.—Payment of the fees and mileage of civilian witnesses shall be made by the supply officer of any vessel, or, at a yard or station where there is no receiving ship, by the disbursing officer of the yard, upon receipt of an order from the commanding officer. The order from the commanding officer must be accompanied with vouchers, properly sworn to by the witness and certified by the judge advocate or recorder, or by the deck court officer, or by the officer before whom the witness gave his deposition. (See p. 378.)

This order must also be accompanied by a copy of the convening order, certified to be correct by the judge advocate or recorder, or by the deck court officer, or by the officer before whom the witness gave his deposition.

The fees and mileage of a civilian witness who refuses to obey a subpœna to appear before a general court-martial or court of inquiry (see sec. 130) will be duly paid (or tendered) by the judge advocate; the money for this purpose will be supplied by such pay officer as may be designated upon the written order of the senior officer present, and the judge advocate receiving the money for the purpose named shall furnish the pay officer concerned with a proper receipt.

The certificate of the judge advocate, recorder, deck court officer, or officer before whom a deposition is taken will be evidence of the fact and period of attendance and place from which summoned, and said certificate shall be made on the voucher.

Upon execution of the certificate the witness will be paid upon his discharge from attendance, without awaiting performance of return travel. The charges for return journeys will be made upon the basis of the actual charges allowed for travel to the court, or place designated for taking a deposition. No other items will be allowed.

Travel must be estimated by the shortest usually traveled route—by established lines of railroad, stage, or steamer—the time occupied

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to be determined by the official schedules; reasonable allowance will be made for unavoidable detention.

If no pay officer be present at the place where the court sits, the accounts, properly authenticated as directed above, shall be transmitted to the convening authority or to the nearest naval station to which a pay officer is attached, with the request that the amount be paid by check.

Accounts of civilian witnesses are not transferable.

Signatures of witnesses when signed by mark must be witnessed.

The following rates for civilian witnesses are prescribed by law:

(*a*) A civilian not in Government employ, duly summoned as a witness before a naval court or board, or at a place where his deposition is to be taken for use before such court, will receive $1.50 a day for each day of actual attendance for such purpose, and 5 cents a mile from place of residence to place of trial or taking deposition, and return, except as follows:

(*b*) Porto Rico and Cuba, $1.50 a day, 15 cents a mile for necessary travel by stage or private conveyance and 10 cents by railway or steamship line.

(*c*) Alaska, east of one hundred and forty-first degree west longitude, $2 a day and 10 cents a mile; west of that degree, $4 a day and 15 cents a mile.

(*d*) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, California, $3 a day, 15 cents a mile for necessary travel by stage or private conveyance, 5 cents by railway or steamship line, and $3 a day for the time necessarily occupied in such travel; District of Columbia, $1.25 a day for each day of actual attendance and 5 cents a mile for travel from place of residence.

Civilian witnesses not in Government employ, summoned to attend courts or boards in the Philippine Islands, are entitled to the per diem and mileage allowed witnesses in attendance upon United States courts—that is, $1.50 per day for each day in attendance on the court and 5 cents per mile for the distance traveled to and from the court. If furnished with transportation by the Government, 42.858 per cent of the 5 cents per mile will be deducted as cost of transportation furnished and 57.142 per cent allowed for subsistence and other expenses of the witness.

An employee of the civil government of the Philippine Islands, paid from insular funds, is not in the employ of the Government for the purposes of payment as a witness.

Civilians in the employ of the Government, when summoned as witnesses, shall be allowed their actual expenses for travel and subsistence while going to and returning from the court, and for actual and necessary reasonable expenses for board and lodging while in attendance thereon. If the court is in session at the place where the

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civilian witness in the employ of the Government is stationed, he shall receive no allowance. (See forms, pp. 378–381.)

(2) THE COMPETENCY OF WITNESSES.

133. Presumption of competency.—A presumption always exists in favor of the competency of a witness whose testimony is offered, and the burden of proving the contrary rests on the party objecting. In deciding upon the competency of a witness the court acts in the capacity of a judge, while in determining questions of credibility it acts in the capacity of a jury.

134. Grounds of incompetency.—The question of competency was formerly much more important than it is now. The grounds of incompetency have, from time to time, been reduced by statute, so that at present there are few persons except idiots, the insane, intoxicated persons, very young children, and the spouses of accused persons, who by law are not competent to testify. In the case of husband and wife, neither spouse is competent to testify for or against the other before courts-martial, excepting that in crimes involving personal injury committed by one upon the other the injured spouse may testify against the other.

135. Witnesses before naval courts generally competent.—Matters that were once regarded as affecting the competency of witnesses are now treated as bearing only upon their credibility. As a general rule, the exceptions to which appear in the preceding section (134), all witnesses capable of so doing are entitled to testify, and it rests with the court in its capacity as jury to decide how much weight is to be given to their testimony. (In this connection see C. M. O. 16, 1916, 7–9.)

136. Challenging the competency of a witness.—The question of the competency of a witness should be raised and decided before he is allowed to testify; but it may be raised at any time during the trial, if the ground of incompetency were not previously known. In challenging the competency of any witness, such challenge must be stated in open court, and, together with the decision of the court thereon, must be fully recorded in the proceedings. (See C. M. O. 32, 1917, 7.)

137. Examination of witness to whom exception is made.—A witness challenged as to competency may be examined relative thereto on oath administered on voir dire before he is regularly sworn as a witness.

In such cases the oath administered shall be in accordance with the form prescribed in section 289.

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138. Accused as witness.—The law provides that the accused shall at his own request, but not otherwise, be a competent witness, and shall be allowed to testify in his own behalf, and his failure to make such request shall not create a presumption against him. Care must be taken by the court that the accused is not placed on the stand unless he himself requests that he be permitted to testify, otherwise a fatal error is committed. The record must affirmatively show that the statutory request was in fact made. (See C. M. O. 29, 1914, 14–15.) Any comment at any time, especially hostile comment, on the failure of the accused to request that he be allowed to testify in his own behalf is improper. (See, in this connection, sec. 161.)

139. Member or judge advocate as a witness.—A member or judge advocate of the court is a competent witness. If required to testify such witness should be the first called, except in the case of the judge advocate called as the official custodian of a document (see sec. 187). Should the president of the court become a witness, the oath or affirmation shall be administered to him by the member next in rank, who shall preside during the progress of his examination. If the judge advocate becomes a witness, he shall record his own testimony, unless the employment of a clerk or stenographer has been authorized. When a member, the judge advocate, the accused, or his counsel has completed his testimony, an entry shall be made to the effect that the witness resumed his seat as member, judge advocate, accused, or counsel. Should the court be composed of but five members, one of whom is called as a witness, this will not affect the validity of the proceedings, since, in so testifying, the witness does not cease to be a member.

(3) EXAMINATION OF WITNESSES.

140. Examined apart from each other.—Witnesses are examined apart from each other; no witness is allowed to be present during the examination of another who is called before him. Before the charges and specifications are read to the accused, the president of the court directs all witnesses to withdraw, and not to return until they are officially called. At the outset of each day's proceedings the direction to withdraw shall be repeated to all who are cited as witnesses and may chance to be present. Obviously, these instructions do not operate in any case to exclude members, judge advocate, the accused, or his counsel when it is necessary for them to be called as witnesses. When the court has finished with a witness, he shall be directed to withdraw, and a minute shall be entered on the record to the effect that the witness withdraws in order to show that two witnesses are not in court at the same time.

141. Order for examination of witnesses.—The proper order for the examination of a witness is as follows: First, direct examination by

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the party who calls him; second, cross-examination by the opposite party; third, redirect examination; fourth, recross-examination. The court may, in the interest of justice, allow further examination by the parties. Any member of the court may put questions to the witness; such questions are subject to objection in the same manner as are questions by parties to the trial. Upon new matter elicited by the examination of the court, the judge advocate and the accused may, within the discretion of the court, further examine the witness.

142. Direct examination.—This is the original examination of a witness by the party calling him. This examination and the testimony brought out thereby form the basis for the further examination of a witness.

143. Introductory questions.—The direct examination of every witness properly begins with asking his name and other introductory matters, such as, in the case of a naval witness, his office, rank or rate, and station, whether he recognizes the accused, and, if so, as whom. A witness for the defense is asked these preliminary questions by the judge advocate (recorder).

144. Witness must testify as to his own knowledge.—The general rule is that the testimony of a witness must be confined to matters within his own knowledge. Under the circumstances of the following section, however, the use of a memorandum may be permitted.

145. Use of memoranda.—A witness may make use of a memorandum: First, in order to stimulate his memory so that he may, with his memory thus refreshed, testify as of his own recollection. Care must be taken that this privilege is not relied upon to furnish a witness with new facts. (C. M. O. 9, 1916, 8.) Nor does it authorize a witness to read his testimony from notes previously made. Secondly, where the memorandum is one made by the witness, or under his direction, at a time when the facts stated therein were fresh in his mind, such memorandum may be received in evidence when the witness is no longer able to testify to such facts as of his own recollection, provided the witness can testify that it was correct when made.

146. Witnesses must state facts, not opinions—Exceptions.—The testimony of witnesses should be confined to the facts in a case. It is the exclusive function of the court to draw the inferences which may be predicated upon the facts established by the testimony. (See Index Digest 1914, 20; C. M. O. 49, 1915, 15; 17, 1916, 8–9.) To this general rule there are three exceptions, as follows:

(*a*) *Opinions arising from facts of daily observation and experience and forming the basis of conclusions of fact.*—Opinions which are conclusions drawn from numerous facts within the daily observation and experience of a witness are admissible. In this class are

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opinions, based upon the demeanor or appearance of a person, as to his sanity, sobriety, identity, or resemblance to another; his physical condition; or his temperamental condition, whether cool or excited, and the like. Any intelligent witness may testify as to his opinions of this character, which are merely conclusions of fact drawn from matters of everyday occurrence.

(*b*) *Opinions of experts.*—In cases involving questions requiring for their solution a knowledge of some specialty, the opinions of qualified experts in such specialty may be given in evidence. Such opinions are admissible for the reason that they are based upon experience and knowledge which is beyond that of the average member of a court. But the rule permitting the admission of "expert" testimony is subject to certain limitations. Before a witness can testify as an expert he must qualify as such. (Index Digest 1914, 20.) The burden of so qualifying a witness rests upon the party introducing him as an expert. But the mere fact that a person who witnessed a certain act, which is a violation of the law, happens to be a professional man, does not constitute him an expert when he testifies as to his observation of that act. (C. M. O. 19, 1915, 5.) In addition to qualifying an expert, the necessity of his appearance must be established before his opinion should be received. A court may not permit an expert witness to be present during the trial and ascertain the facts directly from the evidence. (C. M. O. 51, 1914, 7–8.) The opinion of such a witness may be obtained by means of a hypothetical question, and, in putting such question, facts may be assumed which there is evidence on either side tending to establish; but this rule requires that the facts embraced in the hypotheses must be within the confines of the evidence; otherwise the opinion of the witness will be inadmissible. (C. M. O. 5, 1913, 7.) While an expert witness may be allowed to *assume* facts, as above, to be true in order to base an opinion thereon, it remains for the court, in the last analysis, to determine whether such facts are true. The law, therefore, allows an expert to state an opinion upon an assumed state of facts, but does not permit him to express an opinion upon the specific question whether or not, upon the evidence, the accused is guilty, for this is the very question which the court is sworn to determine upon its *own* opinion. (Index Digest, 1914, 20.) On this whole subject see C. M. O. 7, 1911, 15–16; 5, 1913, 7–8; 24, 1914, 20–22; 51, 1914, 6–9; and 19, 1915, 5.

(*c*) *Opinions as to handwriting.*—When there is a question as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the supposed writer, to the effect that it was or was not written or signed by him, is admissible in evidence. A person is deemed to be acquainted with the handwriting of another person when he has, at any time, seen

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that person write, or when he has received documents purporting to have been written by that person in answer to documents written by himself, or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to have been written by such person have been actually submitted to him.

"In any proceeding before a court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding to prove or disprove such genuineness." (Act of Feb. 26, 1913, 37 Stat., 683.)

147. **Leading questions.**—A question is leading which instructs the witness how to answer on material points, or puts into his mouth words to be echoed back, or plainly suggests the answer which the party wishes to get from him, whether it be put in the alternative form or not. (C. M. O. 48, 1915, 4.) Leading questions are not permitted on direct examination except: (*a*) Questions of identification of persons or things which have already been described, (*b*) introductory questions, (*c*) questions tending to aid a defective memory, and (*d*) those asked a witness who appears hostile to the party calling him. Upon cross-examination leading questions are permitted. (C. M. O. 48, 1915, 4.) For examples of questions held to be leading see C. M. O. 42, 1909, 7; and C. M. O. 48, 1915, 3–5 and the citations given therein.

148. **Questions to witness to be in writing.**—Questions to be propounded to a witness shall be reduced to writing, except in cases where the employment of a stenographer is authorized by the convening authority.

149. **Objections to questions or testimony.**—Should objection be made to any proposed question, or to the reception of any testimony, the court shall proceed at once to determine the same; and the question or matter objected to, with the decision of the court thereon, shall be recorded in full in the minutes of proceedings.

150. **Deliberations to be in closed court.**—Deliberations upon any question of this, or of any other character, shall be conducted in closed court; when the doors are opened, the accused will be informed of the action the court has taken. Whenever the court is closed for deliberation, either upon objection made or for final consideration of the case, the judge advocate of the court shall withdraw and the expression "the court was cleared" shall be understood as including such withdrawal.

151. **Cross-examination—Latitude allowed.**—The cross-examination of a witness is less restricted than the direct, but must, in general, be confined to the matter brought out in the direct examination and

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must not be extended to collateral matter, with a view to contradicting the witness by other evidence and thus discrediting him. The rule is, however, subject to the qualification that, inasmuch as the object of cross-examination is to test the credibility of the witness, great latitude is allowed; leading questions are permitted, as well as those which are not relevant to the subject where the purpose is to test the witness's powers of observation, the accuracy of his memory, and the connection of his statement.

152. Reexamination and recross-examination.—Where the witness, in the course of the cross-examination, has made statements not in harmony with those made upon the direct examination, or statements of a doubtful or equivocal character, an occasion is, at the discretion of the court, presented for his reexamination by the party who originally called him, for the purpose of eliciting from him an explanation of such statements, and also, if desired, of his motives in making the same. But this is, strictly, the full scope of a reexamination, which can not in general extend to the bringing out of new matter, and hence the desirableness of exhausting a witness as far as possible on the original examination. (Winthrop, 522.) A naval court may, however, in the interest of truth and justice, in its discretion, permit new matter to be brought out on reexamination. Where a redirect examination is allowed, a recross-examination should also be allowed.

153. Examination by the court.—A member may put questions, but, since members must be impartial and without prejudice, their questions should in general be for the purpose of making clear the meaning of testimony already given. (See C. M. O. 19, 1915; 3–5.)

A question by a member may be put directly to a witness without submitting it first to the court; if, however, it is objected to and ruled out, it must be recorded as "by a member." If received, it is recorded as "by the court."

154. Further examination of witness.—If a witness is examined by the court, an opportunity should be afforded the judge advocate and the accused, respectively, to reexamine and recross-examine the witness upon new matter brought out by the court's examination; when the witness is excused the record will be made to state affirmatively that neither the court, the judge advocate, nor the accused (counsel) had any further questions to ask the witness. If any step in the examination of a witness is omitted by reason of the fact that the party whose turn it is to examine does not desire to ask any questions, the record must, by a suitable entry, show that such opportunity was afforded; thus, "The accused did not desire to cross-examine, etc."

155. Questions witness may decline to answer.—A witness may rightfully decline to answer certain questions, and in such cases should

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be sustained by the court. These questions are known as "privileged." The principal cases of privilege are:

156. State secrets.—This class of privilege covers all the departments of the Government, and its immunity rests upon the belief that the public interests would suffer by a disclosure of state affairs. The scope of this class is very extended, and the question of the inclusion of a given matter therein is decided by a consideration of the requirements of public policy with reference to such matter. (Winthrop, 499.)

157. Attorney and client.—This class of privilege includes all confidential communications between a client and his attorney, made during the existence of the relationship and having reference thereto, but does not include matters coming to the knowledge of the attorney independently of his employment. The privilege extends to the clerks, stenographers, interpreters, and other employees whose services are necessary to the counsel in the transaction of his business. (Winthrop, 501.) And this privilege, of course, holds in the case where counsel is in the naval service as well as in the case of a civilian attorney. This privilege is for the protection of the client and can not be waived by the attorney. (See, on this general subject, C. M. O. 5, 1917, 5–6.)

158. Husband and wife.—This class covers all communications of a confidential nature made during the continuance of marriage.

159. Criminating questions.—All questions whose answers would expose the witness to a criminal prosecution or penal action come under the head of criminating questions. A witness may properly decline to answer a criminating question. If the declination be sustained by the court, no inference therefrom or comment thereon is permissible. (See C. M. O. 29, 1914, 11 and citations given therein.)

160. Degrading questions.—A witness may also properly decline to answer where the inquiry is as to collateral, irrelevant, or immaterial matters on the ground that his answer will have the direct effect of degrading or disgracing him, as, for example, in a case where his answer could have no effect upon the case except to impair his credibility. He may, however, be compelled to answer as to a matter which is material to the issue or trial, notwithstanding the fact that his answer may tend to disgrace him or bring him into disrepute, unless his answer would also tend to incriminate him in addition to degrading him. (See C. M. O. 29, 1914, 11 and 12.)

161. Testimony of the accused not excepted from ordinary rules.—When an accused elects to take the stand in his own behalf, he is considered as having waived his privilege as to the subject matter of his testimony in chief and must submit to a full cross-examination thereon, notwithstanding the fact that his answers may tend to incriminate or disgrace him. As stated by the Supreme Court in Fitz-

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patrick *v.* United States (178 U. S., 315), "Where an accused party waives his constitutional privilege of silence, takes the stand in his own behalf, and makes his own statements, it is clear that the prosecution has a right to cross-examine him upon such a statement with the same latitude as would be exercised in the case of an ordinary witness as to the circumstances connecting him with the alleged crime. While no inference of guilt can be drawn from his refusal to avail himself of the privilege of testifying, he has no right to set forth to the jury all the facts which tend in his favor without laying himself open to a cross-examination upon those facts." (See C. M. O. 29, 1914, 14–15.)

162. Request that witness be required to answer.—The party examining the witness may request the court to require the witness to answer on the ground that the answer would not tend to incriminate him, or would not tend to degrade him, or, admitting that the answer would degrade him, that the matter under inquiry is material to the issue on trial and must be answered, notwithstanding the element of degradation of the witness. If the court sustains the request of the party examining the witness, the witness must answer, or be in contempt. If the privilege claimed be on the ground of self-incrimination, and the answer, when made under compulsion, does tend to incriminate the witness, the accused can not object or require the court to exclude the evidence on that ground; but such answer can not subsequently be put in evidence in a criminal proceeding against the witness. If the privilege claimed be on the ground of self-degradation, and the answer, when made under compulsion, does tend to degrade the witness, the only result is that it may affect the credibility of the witness. (See C. M. O. 29, 1914, 13–14.)

163. Privilege is a personal one.—The privilege of declining to answer on ground of incrimination or self degradation is a purely personal one and can be claimed only by the witness himself, and not by the accused, his counsel, or any other person. In proper cases, however, the court may, in its discretion, inform the witness of his rights. The accused can not object to such testimony, and the witness may waive his privilege and testify in spite of any objection coming from the accused, his counsel, or any other person. If the witness claims this privilege, but is nevertheless required to testify, it is a matter exclusively between the court and the witness. Under such circumstances the accused is in no worse a predicament than if the witness had come forward voluntarily to testify or had failed to avail himself of his privilege. (See C. M. O. 29, 1914, 12–13.)

164. How privilege is claimed.—When a witness wishes to be excused from answering a question he should state in specific terms on what ground a privilege is claimed. It is for the court to decide whether or not the privilege should be allowed. The witness should not be

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required to detail wherein his answer would incriminate or disgrace, but should make clear upon what ground he is basing a refusal to answer. Both the question and the ground of refusal should appear in the record. (See C. M. O. 29, 1914, 12.)

165. Rule for deciding whether witness should answer the question when privilege on the ground of self-incrimination is claimed.—To entitle a witness to the privilege of silence, the court must see from the circumstances of the case and the nature of the evidence which the witness is called to give that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. The danger to be apprehended must be real and appreciable, with reference to the ordinary operation of the law in the ordinary course of things. It must not be a danger of an imaginary and unsubstantial character having reference to some barely possible contingency so improbable that no reasonable man would suffer it to influence his conduct. When reasonable apprehension of danger appears, however, then, inasmuch as the witness alone knows the nature of the answer he would give, he alone must decide whether it would criminate him, and after it has been made to appear to the court that a reasonable apprehension of danger really exists, it should not require evidence of the nature of the witness's answer further than his own statement that his answer might tend to criminate him. (See C. M. O. 29, 1914, 14.)

166. Impeachment of a witness.—The testimony of a witness may be impeached: (1) By disproving the facts testified to by him; (2) by proof of contradictory statements previously made by him as to matters relevant to his testimony and to the case; and (3) by attacking the witness's general credibility.

167. Impeachment by proof of contradictory statements.—Evidence looking toward the impeachment of a witness by proof of contradictory statements previously made by him is competent only in respect to matters that are relevant and material to the charge. Before contradictory statements of a witness can be proved against him, his attention must be called with as much certainty as possible to the time, place, attending circumstances, and person to whom the statements have been made. If such statements were made in writing, the same should be shown the witness for identification. It is not sufficient to ask a witness in general whether he did not at some time make a different statement, but, in order to prepare the way for impeaching evidence, it is necessary, first, to ask the witness upon cross-examination whether he did not, on a specified occasion, make a diverse statement (specifying it) to a person named. When the impeachment is to be made by the testimony of other witnesses care must be taken to lay the groundwork, as indicated above, for subsequent impeachment while the witness to be impeached is on the stand.

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Otherwise it would be necessary to recall such witness for this purpose before impeaching testimony could be admitted. But, when the previous statement was made under oath and recorded before an official lawfully empowered to administer an oath, it is not necessary to lay the above foundation for impeachment.

168. Attacking general credibility of a witness.—The general credibility of a witness may be attacked in cross-examination, or by evidence tending to show his general bad reputation as to veracity. The fact that a witness has been convicted of a crime involving moral turpitude may also be brought out as bearing on his credibility. (In this connection see C. M. O. 16, 1916, 7–9.) The state of the feelings of the witness and his relationship to the parties may always be proved for the consideration of the court. In all cases it is for the court to determine the weight to be given a particular witness. (See C. M. O. 9, 1916, 6–7.)

169. A party may not impeach his own witness.—Exceptions.—The general rule is that a party is not permitted to impeach the credibility of his own witness, but this does not mean that he can not introduce other testimony as to a particular fact which is directly contradictory to the testimony of such witness. Exceptions to the general rule are: (1) When the witness appears to be hostile to the party that calls him; (2) when a party is under the necessity of calling a particular person as a witness; (3) when the party that calls a witness is unduly surprised at the evidence elicited.

170. Authority of naval court to punish contempts.—See article 42 of the Articles for the Government of the Navy and sections 11 and 12 of the act of February 16, 1909, quoted thereunder. See also note on page 394 in regard to contempt before a summary court-martial or deck court.

171. The president may caution a witness as to his language or behavior.—This caution may be given at the request of a member, the judge advocate, any party to the trial, or on the president's own initiative.

172. Procedure when witness is charged with contempt.—When a witness is charged with contempt he should be given opportunity to reply. If the reply is satisfactory, the proceedings for contempt may be ended. A witness can not, however, purge himself of contempt by insisting that his language or behavior was proper. The testimony of a witness who has been adjudged guilty of contempt may be continued.

173. Place of confinement of a witness adjudged guilty of contempt.—The place of confinement for a witness in the naval service who is adjudged guilty of contempt and is sentenced to confinement should be left to the commanding officer of the person concerned. A communication, signed by the president, to such commanding officer should state the offense, the sentence, and the authority therefor.

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174. In case a civilian witness is adjudged guilty of contempt, the district attorney should be informed.—If possible, before a civilian witness in contempt before a general court-martial or court of inquiry is permitted to withdraw, the federal district attorney should be communicated with in order that the witness may be apprehended expeditiously. The law does not give a naval court authority to restrain such witness of his liberty as in the case of naval witnesses. Even though the witness has departed from the jurisdiction within which the court-martial sits, the district attorney may cause his arrest in another jurisdiction, as the offense is one against the United States for which provision is made in section 1014, Revised Statutes. (See sec. 130.)

175. Verification of testimony.—The recorded testimony of a witness shall be read to or by him in order that he may verify, correct, or amend it. If desirable, the judge advocate may request the court to permit the witness to report on a subsequent day in order to correct or verify his testimony. If the correction or amendment is material, the witness may be further examined on the subject matter affected by the correction. (See C. M. O. 3, 1917, 5.)

176. Manner of correcting testimony.—When a witness reappears to correct his testimony the correction, amendment, or verification may be accomplished in either of two ways: First, the witness may be present during the reading of so much of the record as contains his testimony, and, at the conclusion of such reading, make necessary changes or verify it; or, second, he may be furnished with so much of the record, or a copy thereof, as contains his testimony, to be read over by him out of court, after which he is called before the court to correct, amend, or verify it. The judge advocate may correct obvious clerical errors out of court before the witness is called upon to verify his testimony. (For manner of recording corrections, see sec. 89.)

177. Witness may be warned not to converse upon matters pertaining to the trial.—The object of the examination of witnesses, and the object of all the various rules of evidence covering such examination, is to present to the court testimony, given under oath, covering all pertinent facts relating to the case which are within the personal knowledge of each witness. When the court has all of the testimony of the various witnesses concerning matters in their own personal knowledge before it, it can then, taking all the evidence into consideration, arrive at its finding.

The reason that no witness is permitted in court during the examination of another witness is in order to prevent either the deliberate or unconscious coloring of the testimony of any witness, inasmuch as it is considered essential to the ends of justice that each witness testify truthfully and in accordance with his own recollection of events. For exactly these same reasons it is highly undesirable and improper for witnesses to an occurrence which may probably be the sub-

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ject of judicial investigation to converse with each other concerning the testimony which they would give should they be called as witnesses, or, having testified, to disclose to persons not present the testimony which they gave, or to converse with anybody, including those present in the court room, concerning the details of the testimony given by them. This prohibition, of course, is not intended to prevent legitimate conversations between any persons officially interested in the case and bona fide witnesses, but it is intended to prevent any conversations with any persons whatever which will influence any testimony, directly or indirectly, which is to be given before the court.

The following rules are therefore laid down in regard to warning witnesses to refrain from discussing matters pertaining to the trial:

(*a*) It is competent for the judge advocate or the counsel for the accused to warn prospective witnesses against conversations as to the details of the case with any person other than a party to the trial.

(*b*) The court may, on its own motion, or upon request of any party to the trial, especially direct any witness who has testified in a case to refrain from disclosing, either directly or indirectly, any part of the testimony he has given, and from conversing with any person whatsoever concerning the details of his testimony.

(*c*) The court may also call all the witnesses in the case and instruct them not to converse with any person, other than the parties to the trial, concerning any feature of the case whatsoever, and not to allow any witness who has testified to communicate in any manner anything to them concerning testimony given on the stand.

(*d*) In exceptional cases the court may take the necessary steps to segregate the witnesses, either before or during the trial, in order to prevent intercommunication, and it may require that all communication between a witness who has testified, or a prospective witness, and counsel, judge advocate, or any other party, be in the presence of a provost marshal.

In brief, while in many cases of a routine nature it is not considered necessary to take special steps to safeguard the testimony, the court has full authority at any time to take such steps as may be necessary to insure the inviolability and the uncolored veracity of the testimony which is to be given.

Instruction concerning the inviolability of testimony and the impropriety of conversing on such matters should be given to every person in the naval service, and it should be impressed upon him that, whether he receives special warning or not, it is at all times improper to converse outside of court upon the details of the testimony he has given, or about any part of the testimony he will give if called upon the stand, unless directed so to do by parties to the trial, or other proper authority.

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(4) TESTIMONY BY DEPOSITION.

178. **Deposition.**—A deposition is the testimony of a witness, put or taken down in writing, under oath or affirmation, before an officer empowered to administer oaths (see sec. 184), in answer to interrogatories and cross-interrogatories submitted by the party desiring the deposition and the opposite party.

179. **When taken.**—See act of February 16, 1909, section 16 (35 Stat., 622), quoted under article 29, A. G. N. (See also C. M. O. 29, 1915, 5, and sec. 390.)

180. **How taken.**—The method of procedure in order to obtain a deposition is as follows: The party—prosecutor or defendant—desiring the deposition submits to the court a list of interrogatories to be propounded to the absent witness; then the opposite party, after he has been allowed a reasonable time for this purpose, prepares and submits a list of cross-interrogatories. After the court has assented to the interrogatories and cross-interrogatories thus submitted, it adds such as, in its judgment, may be necessary to elucidate the whole subject of the testimony to be given by the witness. Depositions may also be taken before the assembling of the court by mutual agreement between the judge advocate and the accused (counsel), subject to objections when read in court.

If the witness whose deposition it is desired to take be a civilian, the judge advocate should prepare, in duplicate, a subpœna requiring the witness to appear before the officer designated at the time and place designated for the purpose of giving his deposition. The officer who is to take the deposition will be designated, or caused to be designated, by the convening authority, or, if no officer under the command of the latter be available, by the Secretary of the Navy. It may be left to the designated officer to name the time and place of taking the deposition. The subpœna (in duplicate), together with the interrogatories, should be forwarded to the officer who is to take the deposition. This officer will cause the duplicate subpœna to be served personally upon the witness and return the original, with indorsement that the duplicate has been delivered, to the judge advocate. A civilian witness who attends to give his deposition is entitled to the same fees and expenses as if he had attended personally before the court, and a proper account with the required data should be furnished. (See pp. 375–376.)

If the deposition of a person in the service is required, a summons will not be inclosed with the interrogatories, but the officer before whom the deposition is to be taken, or the officer who causes it to be taken, shall direct the witness to appear at the proper time and place.

181. **After execution.**—When the deposition has been executed, it shall be forwarded sealed to the judge advocate, who then becomes the legal custodian thereof. As soon as practicable after its receipt,

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the judge advocate shall open it in the presence of the accused (counsel) and submit it to the latter, so that he may be prepared at the proper time in the course of the trial to make any objection he may see fit. The judge advocate, as the legal custodian of the deposition, is responsible that no alteration whatever is made therein.

182. Introduction of.—To introduce the deposition, the judge advocate takes the stand as a witness to identify the document. The party offering the deposition presents it to the opposite party and to the court for inspection and opportunity to interpose objection to its admission; and then, if there be no valid objection interposed, the judge advocate shall read the interrogatories and answers. Should objection be interposed by either party to the trial, the court will rule upon the objection.

If it should prove that the testimony contained in a deposition is against the interest of the party causing it to be taken, he can not be compelled to introduce it in evidence against his wishes. Nor can the opposite party, against objection, make use of the deposition, but, where applicable, the following procedure shall be followed:

In cases where the party (either the prosecution or the defense) requesting the taking of a deposition has been taken by surprise, or if for any other reason the answers of the deponent are of such nature that the deposition is withdrawn, the court should allow the opposite side, should it so desire, time to procure another deposition from deponent and allow the deposition to be introduced into evidence out of the regular order if necessary. (File 26251–11382.)

In addition to objection to the admission of the deposition as a whole, as set forth above, it is, even after admission, subject to objection, in part, in the same manner as objection might be made to the testimony of a witness actually on the stand.

If, for example, an interrogatory in the deposition reads:

"Q. Were you, on March 3, 1916, at 11 p. m., at the southeast corner of Broadway and Forty-second Street, New York?"

When this interrogatory has been read, an objection to the question as a leading one would be in order. If made, the court should sustain the objection and direct that the answer be stricken out, in which case the answer would not be read, but the judge advocate would proceed to read the next question.

183. Appended to record.—Whether objections have or have not been sustained, the entire deposition will be properly marked, appended to the record, and referred to in the proceedings.

184. Officers who are authorized to administer oaths.—The act of March 4, 1917, provides, "That judges advocate of naval general courts-martial and courts of inquiry, and all commanders in chief of naval squadrons, commandants of navy yards and stations, officers commanding vessels of the Navy, and recruiting officers of the Navy,

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and the adjutant and inspector, assistants adjutant and inspector, commanding officers, recruiting officers of the Marine Corps, and such other officers of the Regular Navy and Marine Corps, of the Naval Reserve Corps, of the Marine Corps Reserve, and of the National Naval Volunteers as may be hereafter designated by the Secretary of the Navy, be, and they are hereby, authorized to administer oaths for the purpose of the administration of naval justice and for other purposes of naval administration."

When practicable, officers and men of the Navy and Marine Corps who may be required to subscribe under oath to any papers relating to naval administration and the administration of naval justice shall do so in the presence of officers of the service authorized to administer oaths.

185. Affidavits.—An affidavit differs from a deposition in that it is taken *ex parte* and offers the opposite party no opportunity to cross-examine the maker thereof. An affidavit, therefore, is not admissible in evidence for the purpose of proving the subject matter with which the affidavit deals. A rule to the contrary would, in effect, permit a person to testify without subjecting him to cross-examination by the party against whom his testimony is given. (In this connection see C. M. O. 48, 1915, 1–3.)

IV. Documentary Evidence.

186. Definition.—"Legal evidence is not confined to the human voice or oral testimony, but includes every tangible object capable of making a truthful statement, such evidence being roughly classified as 'documentary evidence.' In oral evidence the witness is the man who speaks; in documentary evidence the witness is the thing that speaks. In either case the witness must be competent—that is, must be deemed competent to make a truthful statement—and in either case the competency of the witness must be proved before the evidence is admitted, the difference being that in oral evidence the competency is proved by a legal presumption, and in documentary evidence the competency must be proved by actual testimony; and the further difference that in oral evidence the credit of the witness is tested by his own cross-examination, while in documentary evidence the credit of the witness is tested by the cross-examination of those who must be called to prove its competency." (Words and Phrases Judicially Defined, vol. 3, p. 2154.)

187. Method of introducing documentary evidence.—When documentary evidence is offered before courts-martial, it must be in public session of the court, and the proper procedure is as follows: The proper custodian (the judge advocate or other person properly having the document in his possession) takes the stand as a witness to identify such document; the party offering the document presents it to the opposite party and to the court for inspection and opportunity

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to interpose objection to its admission; and then, if there be no reasonable objection interposed, the witness reads therefrom such entries as may be pertinent to the issue. Should objection be interposed by either party to the trial, the court will rule upon the objection, and the decision of the court thereon will be final, subject to consideration by the reviewing authority.

188. Objection to admission of documentary evidence.—A reasonable objection to the admission of documentary evidence is one which indicates that the document can not be relied upon as a truthful statement. In some cases it is sufficient merely to call attention to the nature of the document in order to make reasonable objection, as, for example, ex parte affidavits, letters from members of the family of an accused, certificates from a physician that an accused has been under medical treatment, etc., the admission of which would, in effect, permit the author to testify without submitting him to cross-examination; or the document may appear on its face as of doubtful veracity, as where the roll of a militia company, *with arbitrary pencil marks*, was held inadmissible to prove the absence of a member of the organization. (Com. *v.* Peirce, 15 Pick. (Mass.), 170.) In other cases it is proper to call witnesses to show that the document is not competent in that it can not be relied upon owing to the way the same had been prepared, as in a case published in C. M. O. 28, 1909, 3, where it was stated: "It also appeared from the testimony of a chief yeoman of the receiving ship on which [the accused] was delivered, who was finally called as a witness, that the manner in which reports are made of deserters received on board that vessel is not such as to warrant their being received in evidence even as to the return of a man to the service." So, too, it may be shown that entries in a document have been made by unauthorized persons, or that the document is a forgery.

189. Alterations in a document.—The party producing as genuine a document which has been altered in a part material to the question in dispute, and which appears to have been altered after its execution, must satisfactorily account for the appearance of the alteration before the document will be received in evidence.

190. Evidence as to the contents of a document.—As a general rule the best evidence as to the contents of a paper is the production of the paper itself and no other evidence thereof is admissible, except in the following cases: (*a*) Where the original has been lost or destroyed, in which case parol evidence may be received to establish the contents of the writing, or an authenticated copy may be received; (*b*) where the original is a record or other document, in custody of a public officer, in which case copies duly authenticated under the seal of a department are admitted in evidence in the same manner as the originals, and, by statute, full credence is to be given

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them (R. S., 882); (*c*) where the original is in possession of the party against whom the evidence is offered and the latter fails to produce it after reasonable notice, in which case either parol evidence, or a duly authenticated copy may be received; (*d*) where the original consists of numerous accounts or other documents which can not be examined by the court without great loss of time, and the fact sought to be established from them is only the general result of the whole, in which case parol evidence may be received in evidence to establish the general result without reading the records, as, for example, where an officer's official record, embracing numerous individual reports, letters, etc., is introduced to prove that he has never been reported for certain misconduct. In such a case a witness who has carefully examined the reports may be permitted to testify as to the general result—that is, that the official record contains no remarks to the effect that the accused was intemperate, etc. Likewise, where it is desired to prove from a document, as a service record, that an enlisted man has received an average mark of 5 in sobriety, it is unnecessary to read all his marks under this heading, but the general result may be stated by the witness who has examined the record.

191. Document in full in evidence.—Although only a part of a document may have been read to the court, or only a general result deduced therefrom have been testified to, the document in full must have been offered and received in evidence before such testimony can be received. The opposite party is thus afforded an opportunity to call upon the witness to read such additional entries as may be pertinent to the issue and for which the party introducing the document failed to call. Thus, if the question at the time before the court is the character of an accused, and the defense has introduced in evidence his service record from which it has been shown that the accused has an average of 5 in markings in sobriety, the judge advocate, by cross-examination, can require the witness to read the marks of the accused in obedience, in order to show that the accused has a number of low marks therein or that his average therein is low. In other words, the rule provides an opportunity for the court to have before it all the information contained in the document, and the party introducing it in evidence can not pick and choose therefrom the points he desires to set forth and suppress the remainder. A document as a witness does not differ in status from a man as a witness; the opposite party and the court can demand from either all admissible evidence in possession of the witness, and is not confined to a consideration of only such evidence as the party putting the witness on the stand may desire adduced from that witness. But in this connection, it is to be noted that the documentary evidence offered to a court need not necessarily be a record complete in itself. For example, when, under article 60 A. G. N., the record of the testi-

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mony of a witness, from whom oral testimony can not be obtained, given before a court of inquiry, is offered in evidence before a general court-martial, the full document admissible in evidence is the record of the entire testimony of such witness before the court of inquiry and not the whole record of proceedings of such court. See C. M. O. 24, 1917.)

192. Parol evidence offered in connection with a document.—While parol evidence is not admissible to vary in any way the contents of a document, yet it may be received for the purpose of explaining any ambiguity in a document or of throwing light on the attendant circumstances.

193. Documentary evidence not conclusive.—In general, a document is *prima facie* only and is not conclusive evidence of the facts stated therein. The opposite party may introduce evidence to rebut it or show that the contrary is the truth.

194. Public Documents.—Documentary evidence introduced before naval courts is usually in the form of public documents, the entries in which are presumed to have been made by proper authority. Among such are:

195. Service records—Reports of deserters received on board, etc.—These are such documents as may, when properly identified and produced, be admitted in evidence. The general rule is that it is sufficient if the record is kept in the discharge of a public duty and is a convenient and appropriate mode of discharging that duty in order that it may be admitted as a public document. Thus, a record has been held admissible if it was kept by the direction of superior officers and in accordance with the rules and practice of the office. (17 Cyc. 307.) The entries made in service record books and official certificates are not in the nature of private entry or memorandum, since they are made by public officers whose duty it is to record truly the facts stated therein; and it is not necessary that the entries be made personally by a public officer himself, if the entries are made under his direction by a person authorized by him. (C. M. O. 31, 1915, 14–15.)

196. Documentary evidence in connection with the proof of desertion.—The most frequent use of documentary evidence before courts-martial arises in cases of trial for desertion, and there has been some confusion in applying the rules of evidence in this regard. The following rules apply to the use of service records and reports of deserters received on board as evidence before naval courts-martial:

The mere entry of desertion in a service record, with entries of attendant circumstances, is not sufficient to prove the gravamen of the offense. While admissible, it is only prima facie evidence, open to explanation and to rebutting testimony, and while it would, in the absence of rebutting testimony, show that the accused was attached

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to and serving on board the vessel, or stationed at the navy yard or naval station indicated, that he was found to be absent at a certain time, that his absence continued for 10 days or more, and that it was not satisfactorily explained, it would not be of sufficient weight to establish the fact that he had intended permanently to abandon the service, that he was possessed of the *animus non revertendi* (the intention of not returning) when the officer made the entry. Yet the entries mentioned are admissible evidence of the stated facts that were within the knowledge of the officers who made the entries and are by no means without probative force in determining whether the offense of desertion has been committed.

The entries on a "Report of deserter received on board" are entitled to consideration when such report has been properly received in evidence, to prove the date and place of return from unauthorized absence of the party mentioned therein, together with his condition at the time, the state of his wearing apparel, etc.

The question of *animus non revertendi* must, of necessity, always be a conclusion from certain facts, and is for the court to determine from all the evidence in the case.

The foregoing (introduction of "Service record and report of deserter received on board") "present applications in various instances of the well-established rule that official reports and certificates made contemporaneously with the facts stated, and in the regular course of official duty, by an officer having personal knowledge of them, are admissible for the purpose of proving such facts." (U. S. *v.* Corwin, 129 U. S., 385.) They are not conclusive evidence of the facts stated therein, and rebutting testimony may be offered; but they may well establish the case for the prosecution, if an accused fail to produce sufficient evidence in rebuttal thereof to overcome the prima facie case so made out against him.

"Manifestly the design and meaning of the rule is not to convert incompetent and irrelevant evidence into competent and relevant evidence simply because it is contained in an official communication." (U. S. *v.* McCoy, 193 U. S., 601.) Should the officer who made the entries be testifying under oath, his assertion that an accused had deserted would be excluded as inadmissible; he could only be heard to state facts within his knowledge, such as the fact that the accused had been absent without leave, had disposed of his clothing before so absenting himself, etc., from which the court would conclude whether such facts would warrant a finding of guilty on a charge of desertion. The officer's assertion that an accused had deserted would itself imply the existence of primary and more original and explicit sources of information.

The facts necessary to make out a case of desertion may be proved not only by the records, but also by parol evidence. Where records,

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as the above, are introduced as evidence, it is not necessary or required that the officer who made the entries be shown to be unavailable by reason of death, absence, or other circumstances of such a nature. (C. M. O. 31, 1915, 15–16.) The foregoing supersedes C. M. O. 47, 1910, 9, and all other instructions on this subject conflicting with the instructions laid down herein.

197. Documentary evidence in case of fraudulent enlistment.—In cases of fraudulent enlistment the original shipping articles (enlistment paper), in the absence of testimony from the officer who enlisted the accused, will be necessary. The oath and declaration is not contained in the service record. A service record constitutes the official history of the man; the shipping articles contain the oath and declaration. Finger-print records of the accused are also admissible in this connection.

198. Copies of records.—"Copies of any books, records, papers, or documents in any of the executive departments, authenticated under the seals of such departments, respectively, shall be admitted in evidence equally with the originals thereof." (R. S., 882.) The words "documents" and "papers" can not be held to mean every document or paper on file, but only such as were made by an officer or agent of the Government in the course of his official duty. (7 Ct. Cls., 407.)

199. Private documents.—It is a general rule that private documents of an ex parte nature, such as affidavits (see sec. 185), are not admissible as evidence of the subject matter therein contained. But the original entries and writings of a person who was in a position to know the facts therein stated, made at about the time such facts occurred, are admissible as evidence of such facts under the following circumstances, provided the entrant is unavailable as a witness as in case of subsequent death or insanity: (1) When the entry or writing is against the interest of the maker; and (2) when it was made in due course of business, professional capacity, or in the course of the person's ordinary and regular duties. As to the admissibility of a memorandum, the authenticity of which is vouched for by a witness on the stand, see section 145.

200. When document is not offered testimonially as to its contents.—The distinction must be recognized between cases in which a document is offered as evidence of the truth of the facts stated therein and those in which it is not so offered. As, for example, in a case where the specification alleged that certain conduct brought scandal and disgrace upon the naval service, it was held that a newspaper was properly admissible in evidence, not as evidence of the facts stated therein in regard to the conduct of the accused which must be otherwise established, but as evidence of the publicity which was given the alleged misconduct, for which purpose it was not hearsay but was the best evidence. (C. M. O. 4, 1913, 55.)

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201. When question as to genuineness of handwriting is involved.—See sec. 146 (c).

202. When a document is not in the hands of the party desiring to introduce it.—If the document or paper to be introduced is not in the hands of the party desiring to introduce it, it may be produced in court by serving a *subpœna duces tecum* upon the holder. (See p. 374.)

203. In connection with making up the record.—In general, either the document itself, or a certified copy thereof, or a certified copy of such extracts therefrom as were read to the court, by either party, must be appended to the record, or set out in full in the recorded testimony of the witness who reads from the document. As, however, an officer's record is a part of the official files of the department, it is not required that the original or a certified copy of the same be attached to the record of proceedings where the court is one convened by the Secretary of the Navy. Also, when a document is an exhibit attached to the record of a court of inquiry, or to another court-martial record, and is such that a copy could not well be made, as a chart, design, etc., or where documentary evidence is ruled out, neither the original nor a certified copy thereof need be appended to the record; but its contents should be referred to in the body of the record, at the appropriate place, so that the reviewing authority may know what the document was and where it may be found.

V. Evidence in general.

204. Under this head there is to be considered:

(1) Order of introducing evidence.
(2) Weighing evidence.
(3) Evidence in aggravation or extenuation.

(1) Order of introducing evidence.

205. Order for the introduction of evidence.—The proper and usual order and sequence for the introduction of evidence is as follows: First, by the prosecution; second, by the defense; third, rebuttal by the prosecution; fourth, surrebuttal by the defense. The beginning and end of each of these steps shall be noted in the record. The court may, in the interests of justice, allow evidence to be introduced out of the above order and may, for satisfactory cause, allow the prosecution or the defense to introduce evidence at any time before arriving at its findings thereon, but it shall not thereafter receive any new evidence. The court may also permit a case once closed by either or both sides to be reopened for the introduction of evidence previously omitted, if the court has not yet arrived at its find-

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ings and if convinced that such evidence is so material that its omission would leave the investigation incomplete. In all such cases both parties must be present, and any evidence thus received would be subject to cross-examination and rebuttal by the party to whom it may be adverse. All evidence, whatever its nature, shall be recorded in the proceedings in the order in which it is received by the court.

206. Rebuttal.—During the rebuttal evidence may be introduced by the prosecution to explain or repel the evidence introduced by the defense. In general, anything may be given as rebutting evidence which is a direct reply to that produced by the other side. The judge advocate may rebut any new matter by evidence in rebuttal; he may impeach the testimony of witnesses for the defense, or may sustain the credibility of his own witnesses.

The evidence here introduced should, in general, be confined to such as relates to evidence introduced by the defense.

207. Surrebuttal.—The defense is accorded an opportunity in the surrebuttal, to overcome matters brought out in the rebuttal; that is, the defense may here attempt to sustain its original evidence.

(2) WEIGHING EVIDENCE.

208. Weighing evidence.—In weighing evidence the court may consider: (1) The witness's manner of testifying; (2) his intelligence; (3) his means and opportunities of knowing the facts to which he testifies; (4) the nature of the facts to which he testifies; (5) the probability or improbability of his testimony; (6) his interest or want of interest; (7) his personal credibility, so far as it legitimately appears upon the trial; (8) the number of witnesses, subject to the remarks in the following section; (9) all the facts and circumstances of the case. (See, in this connection, C. M. O. 16, 1916, 7–9 and 9, 1916, 6–7.)

209. Weight of evidence as affected by the number of witnesses.—The relative number of witnesses for the prosecution and the defense is by no means decisive in general, as the relative weight of the evidence depends much less upon the number of witnesses than upon their character, their relation to the case, and the circumstances under which their testimony is given. The "weight of evidence" is not a question of mathematics, but depends on its effect in inducing belief. It often happens that one witness, standing uncorroborated, may tell a story so natural and reasonable in its character, and in a manner so sincere and honest as to command belief, although several witnesses of apparently equal respectability may contradict him. The question for the court is not on which side are the witnesses the more numerous, but what evidence does it believe.

210. Weight to be given testimony of the accused.—The fact that a witness is the accused does not condemn him as unworthy of belief,

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but does create in him an interest greater than that in any other witness, and to that extent affects the question of credibility. It is a general rule that the relations of a witness to the matter to be decided are legitimate subjects of consideration in respect to the weight to be given to his testimony. In every case the testimony of an accused should be considered in connection with all the evidence adduced and given such weight as the court may believe it to merit. (See Reagan *v.* United States, 157 U. S., 301.)

211. Cumulative evidence unnecessary.—When a fact has been sufficiently established, it is unnecessary to consume the time of the court by the introduction of additional evidence which is merely cumulative, as such carries no additional weight.

(3) EVIDENCE IN AGGRAVATION OR EXTENUATION.

212. Plea of guilty does not exclude evidence for the prosecution.—A plea of guilty does not necessarily exclude evidence for the prosecution. Where the court has discretionary power as to the punishment to be awarded, it is proper that it should have full knowledge of all the circumstances attending the offense. The reviewing authority is also entitled to this knowledge, and to this end it is proper for the court to take evidence after a plea of guilty, unless the facts are so fully set forth in the specification as to show all the circumstances of mitigation or aggravation.

213. Accused may cross-examine.—When evidence of this character is introduced after a plea of guilty, the accused has the same right to cross-examine the witnesses and to offer evidence in rebuttal as though he had pleaded not guilty.

214. Character evidence.—In cases at naval law character evidence is usually offered for the purpose of obtaining mitigation of the punishment which may follow in case of conviction. Thus offered, it is given a wide latitude; it need not be limited to general good character, but may include particular acts of good conduct, bravery, etc.; it need have no reference to the nature of the charge, but may exhibit the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any of the traits that go to make a good officer or enlisted man. But when character evidence is offered by the defense as bearing on the issue, such evidence must be as to general character; particular acts of merit are not admissible. Also, when thus offered, the character shown must be of such a nature as to be relevant to the issue involved in the case; as a general reputation for sobriety when charged with drunkenness, or for obedience when charged with disobedience. (As to the duty of a judge advocate (recorder) to rebut character evidence, see C. M. O. 39, 1915, but this applies only when evidence as to good character has first been introduced by the defense.)

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IX.

GENERAL COURTS-MARTIAL.

(A. G. N. 35 to 43; 45 to 54; and
subsequent statutory enactments quoted thereunder.)

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GENERAL COURTS-MARTIAL.

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COURTS-MARTIAL IN GENERAL.

PLACE OF MEETING—SESSIONS.

215. Place of meeting.—Courts-martial are assembled and held in a convenient part of a ship or navy yard or other place as may be ordered. But no naval court or assembly of a judicial character shall be ordered or permitted to assemble or conduct any part of its proceedings in any place subject to foreign jurisdiction. When, however, United States forces have landed in foreign territory for military purposes, that part of the foreign territory actually occupied by such forces is not subject to foreign jurisdiction within the meaning of this section. (C. M. O. 42, 1915, 10.) Should a court-martial at any time find it necessary to meet at a place other than that ordered, the sanction of the convening authority to make such change should be obtained.

216. Hours of sessions.—A naval court-martial may hold sessions at any hour of the day, but courts-martial are not to meet at unusual hours, nor should the duration of the sittings be unusually protracted, unless the court is informed by the convening authority that the case is one of extraordinary urgency and that such a measure is therefore warranted.

217. Sessions to be public.—The sessions of courts-martial shall be public, and in general all persons except such as may be required to give evidence shall be admitted. (In this connection see C. M. O. 51, 1914, 3, for procedure to be followed in case it is desired to exclude certain classes of persons.)

CONVENING AUTHORITY.

218. Convening authority.—See article 38, A. G. N., and subsequent statutory enactments quoted thereunder (p. 39).

CONSTITUTION.

219. Composition of court.—See article 39, A. G. N. (p. 40).

220. Rank of members.—Except in cases of emergency, the circumstances of which shall be reported in writing to the department by the convening authority, no officer shall be ordered as president or member of a general court-martial who is below the rank of lieutenant in the Navy or captain in the Marine Corps.

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221. Trial of staff or marine officer.—In detailing officers for the trial of a medical, pay, or marine officer it is proper, if the exigencies of the service permit, that at least one-third of the court be composed of officers of the same corps as the person to be tried.

222. Personnel of court.—No officer should be named as a member against whom either the judge advocate or the accused can reasonably object when called upon to exercise the privilege of challenge. (In this connection see C. M. O. 9, 1916, 8.)

223. Application of limitations as to number, rank, and corps.—In applying the limitations above as to number, rank, and corps of members, it rests with the discretion of the convening authority as to what would constitute an injury to the service.

224. Officers of the National Naval Volunteers, Naval Militia, Naval Reserve Force, Coast Guard, etc., as members.—As to officers of the National Naval Volunteers, Naval Militia, Naval Reserve Force, Coast Guard, and the several services enumerated in section 25 as coming under naval jurisdiction at certain times, sitting as members of courts-martial for the trial of officers and men of the United States naval service, the said Volunteers, Militia, Reserves, Coast Guard, and other services, see General Order No. 296.

225. Changes in court.—Changes in the composition of the court can legally be made only by the convening authority, and no officer is empowered to sit as a member or judge advocate except in obedience to an order signed by such authority and addressed to the court. (See p. 368.)

226. Changes in composition may be made by signal.—Changes in the composition of, or instructions to, general courts-martial may be made by signal, but the signal shall be followed by a written confirmation.

227. Five members form a quorum.—The number of members may be reduced by various causes during a trial, but so long as five members remain the court is a legal court and can proceed. If reduced below the number of five, the court must still meet and adjourn from day to day until the absent members return, or until sufficient additional members are detailed thereto, or until the court is dissolved by the convening authority, who should be notified of the condition of affairs.

THE PRECEPT.

228. The precept.—The precept is the order convening the court. It is signed by the convening authority and addressed to the president of the court. It specifies the time and place of meeting and recites the composition of the court. Supplementary to the precept,

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individual orders are issued to the officers named therein directing them to perform the duties set forth in the precept. (But such orders from the Chief of the Bureau of Navigation or Commandant, Marine Corps, are not in themselves sufficient. Appointment by the convening authority is necessary. See C. M. O. 49, 1910, 6.) If the convening authority desires to authorize the court to adjourn over holidays, the precept should specifically state that such authority has been granted. (See A. G. N. 45.) When less than 13 members are detailed on a general court-martial, or any of the discretionary provisions under "Constitution" above have not been fulfilled, the precept should specifically state that "no other officers can be detailed without injury to the service." (See pp. 343, 367, and 371–373.)

229. Precept read.—The precept, together with any orders from the convening authority directing a change in the composition of the court set forth therein, must be read by the judge advocate in court in the presence of the accused.

230. Copy of precept to be prefixed to record.—A copy of the precept, together with copies of any orders from the convening authority directing changes in the composition of the court set forth therein, shall be prefixed to the record of proceedings in each and every case.

231. Disposition of original precepts.—The original precept, together with any orders directing changes in the composition of the court set forth therein, shall be kept until the court is dissolved, or, in the case of a permanent navy-yard court, until a new precept is issued, and then returned to the convening authority. If the convening authority be other than the Secretary of the Navy, he shall then forward the same to the Navy Department (Office of the Judge Advocate General).

The Charges and Specifications.

(See Chap. VI.)

232. Copy of charges and specifications forwarded to the accused.—The copy is sent to the accused by the convening authority through the usual official channels. (See p. 368.) Facts as to the delivery may be obtained from the commanding officer under whom the accused is serving. The accused shall be asked whether he has received a copy of the charges and specifications preferred against him, and on what date.

233. Denial of accused as to receipt.—If the accused denies having received a copy of the charges and specifications, evidence to establish the fact may be introduced.

234. Original prefixed to record.—The original charges and specifications shall be prefixed to the record in each case.

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235. Must be pronounced in due form and technically correct.—After the court has been organized (sworn), the accused is asked if he has any objections to make to the charges and specifications. If he does not object to any feature of them, and the judge advocate reports no defect in them, and if the members of the court, after carefully scrutinizing them in closed court, find no defect in them, the court pronounces the charges and specifications in due form and technically correct. (For the procedure in case of errors see sec. 56.) An entry to this effect must be made upon the record. After this stage of the proceedings the accused is estopped from objecting to any feature of the charges and specifications except an error in substance. (See sec. 56 (3).) Since an error in substance is one of such a nature as to vitiate the entire proceedings, it may be noted at any stage of the trial that it manifests itself.

THE MEMBERS.

236. Take seat in order of rank.—The members are named in the precept in order of their rank and take seat accordingly, the president at the head of the table and other members at his right and left alternately.

237. Duties in general.—In general, the members of the court, as a body, finally decide upon all questions as to the admissibility of evidence and pass upon all questions presented to the court during the course of the proceedings. Also, the members of a court, who sign its proceedings, as well as the judge advocate, are responsible for the correctness of same.

238. Voting.—The vote of each member, upon a question arising before the court, has equal weight, and, in taking the opinion of the court, the junior member shall vote first and then the others in inverse order of their seniority. In the event of a tie vote upon a motion or objection, the same is not sustained. When there is a majority, the view of the majority becomes the decision of the court. For method of arriving at the findings and sentence see sections 318 and 336.

239. Duty of members to decide according to the law, even if at variance with their individual beliefs.—Courts-martial can not, with propriety, attempt to rise above the law, of which they are the creatures, and disregard the provisions of law. (See C. M. O. 4, 1913, 56.) If by reason of a lack of knowledge of the law a court arrives at an incorrect finding or unjustified sentence, there has been provided, in the interests of justice, a means of correcting such error. The department may return the record for further consideration, pointing out what the law is in the premises. In such event the court is not justified in disregarding the law because an application of the same

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may reach a result at variance with the individual beliefs of a majority of its members, but should accept the law as laid down to it by proper authority and come to its findings and sentence anew accordingly. (See C. M. O. 25, 1916, 4.)

240. Liability of members.—A court-martial has no power to punish its members, but a member is liable for improper conduct as for any other offense against naval discipline.

The members of a duly constituted and organized court-martial can not be interfered with in their proceedings by naval authority, yet they are responsible in civil courts for any abuse of power or illegal proceedings.

241. Status of members in respect to other duties.—An officer detailed for duty on a general court-martial is, while so serving, exempt from other duty, except in cases of emergency, to be judged by his immediate commanding officer, who shall, in case he require such officer to perform other duty, at once communicate with the convening authority, assigning the reasons for his action.

When a general court-martial adjourns without day, or for a period of more than two days, the president of the court shall report the fact to the senior officer present, and the members of the court shall then be available for other duty.

242. Absence of members.—See article 46, A. G. N. (p. 42).

243. Order from superior.—In case of absence by reason of an order from a superior officer, the provisions of the Navy Regulations (R-1513 (2)) shall be complied with. The report of the circumstances shall be forwarded by the member receiving such order to the convening authority through the president of the court, and a copy of such report shall be attached to the record of each case to which it applies.

244. Illness of member.—In case a member is ill, he shall, if able, request the attending medical officer to report the fact of his sickness to the convening authority, and such request will be complied with. The report shall be forwarded through the president of the court, and a copy thereof will be attached to the record of each case to which it applies. When the member is able to resume his duties, the attending medical officer shall report such fact in the same manner as above prescribed.

245. Detachment from ship or station.—The detachment of an officer from his ship or station does not of itself relieve him from duty as a member or judge advocate of a general court-martial; specific orders for such relief are necessary.

246. Procedure in case of absence of a member.—In case of the compulsory temporary absence of a member, the court may excuse the member so absent from further attendance upon the case then pend-

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ing, provided there remain the legal number of members present; but should that not be deemed possible or advisable, and should such member resume his seat, the record of proceedings during his absence shall be read to him and the requirements of article 47, A. G. N., shall be strictly complied with. If the absence of a member reduces the court below the legal minimum, an adjournment should be taken until the next day or over Sunday, as the case may be, unless it appears that the absence of the member may be protracted, in which case the president should inform the convening authority of the facts.

247. Procedure upon seating of new member.—In the case of a new member of the court being appointed after the trial has begun, he shall take his seat as such, subject to challenge in the same manner as other members, the reading of the record of proceedings of the trial to date, and the requirements of article 47, A. G. N.

The President.

248. Duties in general.—The senior officer in rank of a naval general court-martial becomes president thereof by virtue of his rank. Besides his duties and privileges as a member, he is the organ of the court. He is responsible for the dignified and orderly conduct of the proceedings of the court and is empowered to keep order. He shall recognize the equality of members in deciding questions presented to the court in the course of its proceedings, and in all cases where such questions arise he shall order the court cleared for the purpose of reaching a decision thereon. (See sec. 238.) The president speaks and acts for the court and in every case announces the ruling of the court. He is also responsible that all persons called before the court are treated in a becoming manner, and in all cases of impropriety, whether in language or behavior, shall, if necessary, report the offender to the convening authority.

249. Administers oaths.—The president administers the oath to the judge advocate and to the witnesses.

The Judge Advocate.

250. Responsible to convening authority.—The judge advocate is, in his military character as an officer, responsible for the proper discharge of his duty to the convening authority. (In this connection see C. M. O. 49, 1915, 10–11.)

251. Appointment of judge advocate.—The authority to convene general courts-martial implies the power to appoint the judge advocate. When, therefore, it is decided to assemble a general court-martial, the convening authority shall select a competent commissioned officer, who shall, if possible, not be liable to summons as a material witness

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in the case, to perform the duties of judge advocate, and shall name him as such in the order convening the court.

252. Judge advocate not to be challenged.—Neither the judge advocate nor the counsel, if any, detailed to assist him may be challenged on any grounds.

253. Duties before trial.—When the judge advocate is notified that a case is to be tried before the court of which he is judge advocate, he should be furnished with such papers and instructions as are considered necessary for his guidance. The record of proceedings of a court of inquiry in the case, if any has been held, must be transmitted to the judge advocate, who shall examine it, to the end that he may, if practicable, summon all the necessary witnesses. He should question such persons as the papers in his possession indicate have any knowledge of the facts involved with a view to obtaining all necessary evidence to sustain the charges and specifications.

It is his duty to ascertain that the accused has received a true copy of the charges and specifications preferred against him and when the same was received. He shall critically examine the charges and specifications in order that, prior to the arraignment, he may advise the convening authority of any technical inaccuracies that he may discover. (See sec. 56.)

Before the court assembles the judge advocate should also see that a suitable place is provided for the sessions of the court, and that it is supplied with writing materials for the use of the members. He should summon the necessary witnesses for the prosecution, obtain from the accused a list of his necessary witnesses and summon them. (See secs. 122 to 132.) He should make a preliminary examination of the witnesses for the prosecution, and, as far as possible, systematize his plans for conducting the case. Prior to the trial, he shall, for the convenience of the court, place upon the table several copies of the charges and specifications on which the accused is to be tried. The judge advocate should confer with the accused as soon as practicable after the latter has received a copy of the charges and specifications. The judge advocate should scrupulously avoid even the slightest suggestion to the accused that he plead guilty to anything charged against him. He should inform the accused that he is entitled to counsel; that he may have a reasonable time in which to prepare his defense; and of his rights in regard to having witnesses summoned for the defense. The judge advocate should inform the accused as to the probable witnesses to be called for the prosecution, although it is unnecessary to inform him as to the testimony expected from them. In a large majority of cases the accused will not know whether he wants, or needs, counsel. In that event the judge

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advocate should explain to him the general duties of counsel for the defense. If, in discussing the case with the accused, it develops that he might have any good defense whatever, discussion of the merits of the case should be terminated at once and the accused advised to secure counsel. Whenever an accused has secured counsel, all negotiations by the judge advocate should be conducted through that counsel.

254. Duties during trial.—During the trial the judge advocate conducts the case for the Government. He executes all orders of the court; reads the convening order; administers the oath to the members, clerk, stenographers, and interpreter; arraigns the accused; examines witnesses; supervises and is responsible for the keeping of a complete and accurate record of the proceedings.

While the court is in open session it is the duty of the judge advocate to advise the court in all matters of form and of law. On every occasion when the court demands his opinion, he is bound to give it freely and fully; and, even when it is not requested, to caution the court against any deviation from essential form in its proceedings, or against any act or ruling in violation of law or material justice. The accused and his counsel have a right to the opinion of the judge advocate, in or out of court, upon any question of law arising out of the proceedings. The judge advocate shall acquaint himself with the rules of evidence, and apply them in determining the admissibility of evidence. He shall offer only such evidence as is properly admissible. When in doubt, he shall offer the evidence. The judge advocate is particularly to object to the admission of improper evidence, and he shall point out to the court the irrelevancy of any evidence that may be adduced which does not bear upon the matter under investigation. Should the advice of the judge advocate be disregarded by the court, he shall be allowed to enter his opinion upon the record. Under such circumstances it is also proper for the court to record the reasons for its decision. The minutes of opinion and decision are made for the information of the reviewing authority, who should have the error, on whichever side it may be found, brought fairly under his consideration; but neither the judge advocate, the accused, nor any member of the court has any right to enter an exception or protest on the record.

255. To protect interests of accused who does not have counsel.—In the event that the accused has no counsel the judge advocate shall protect his interests, having in mind, however, at all times his duties as prosecutor. Under such circumstances he shall not fail to advise the accused against advancing anything which may tend either to criminate him or prejudice his cause; he shall see that no illegal evidence is brought against the accused, and shall assist him in pre-

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senting to the court in proper form the facts upon which his defense is based, including such evidence as there may be in extenuation or in mitigation as well as evidence of previous good conduct and character.

256. He shall not "try case out of court."—The judge advocate shall not usurp the functions of the court by weighing evidence outside of court and advising the court to accept a plea of guilty in a less degree than charged; or by weighing the evidence in the case as shown by the original papers and withholding evidence which should be submitted to the court for its consideration. (See C. M. O. 1, 1914, 6; 29, 1914, 6; and 42, 1915, 7–8.)

257. Procedure of court in case of the absence of the judge advocate.—The temporary absence of the judge advocate at any time during the progress of the trial does not invalidate the proceedings; but, as the court has no authority to detail any person to act as judge advocate, it must, in case of his incapacity, adjourn from day to day until he is able to resume his duty or a successor is appointed by the convening authority.

258. Judge advocate not to be present during closed court.—The court may go into closed session for the consideration of any matter coming before it, and always does so during the consideration of the finding and sentence. When the court is to be cleared, the president so announces, and all persons, including the accused, his counsel, and the judge advocate, withdraw. But the judge advocate is called before the closed court to record the findings and again to record the sentence; also under the circumstances stated in section 363.

259. To report delays in trials.—The judge advocate shall report to the convening authority all cases, with the reasons for the delay, in which the accused is not brought to trial within 10 days after the charges and specifications have been received by the judge advocate. (In this connection see C. M. O. 20, 1915, 8.)

Counsel for the Judge Advocate.

260. Detailed or authorized by convening authority.—In order that a counsel for the judge advocate may have standing before a court, it is necessary that he be detailed or authorized by the convening authority. (See C. M. O. 41, 1915, 10–11.)

261. Privileges of.—If counsel be detailed or authorized by the convening authority to assist the judge advocate, the court shall give him equal facilities with the counsel for the accused in the performance of his duties.

262. Not subject to challenge.—See section 252.

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ACCUSED.

263. To be present in open court.—Except as noted in the succeeding section the accused should be present during all the proceedings of a court-martial held in open court. If for any reason it is desired to call the judge advocate before the court, while it is closed for deliberation, to advise it, the accused should also be present and the court should be opened. (See C. M. O. 51, 1914, 1–2; 6, 1915, 6; 41, 1915, 10; 49, 1915, 14.)

264. Where the accused escapes.—Where the accused in a case on trial effects an escape and disappears he may properly be held to have waived his defense and the court may proceed with the trial (receiving evidence from the prosecution) to a finding and sentence.

COUNSEL FOR THE ACCUSED.

265. Accused entitled to counsel.—The accused is entitled to counsel as a right, and the court can not properly deny him the assistance of a professional or other adviser. Enlisted men to be tried shall be particularly advised of their rights in the premises, and should be represented by counsel, if practicable, unless they explicitly state that they do not desire such assistance. Permission to address the court should be granted by the court to counsel for the accused, and the latter should be allowed to use all legal means to protect the interests of the accused, but shall not be permitted to interfere in any manner with the court's proceedings.

266. Officer detailed as counsel.—When the accused has no legal adviser, the commandant of the navy yard or station, the commander in chief, or the senior officer present within whose jurisdiction the court sits shall, if the accused so requests, detail a suitable officer to act as his counsel. If there be no such officer available, the fact shall be reported to the convening authority for action. An officer so detailed shall perform such duties as usually devolve upon the counsel for the defense before civil courts in criminal cases. As such counsel, he shall use all legal means to protect the interests of the accused and to present to the court such defense as the accused may have.

267. In case request of accused for certain person to act as counsel is refused.—Sometimes the request of the accused to have a certain person act as counsel is refused for cause and some one else is appointed. Under such circumstances the record should always show the grounds for refusing the original request of the accused. Wherever practicable, the accused should be allowed such person as he requests for counsel.

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268. Absence of counsel for the accused.—If the counsel for the accused be absent, the record should show affirmatively that the accused waived the privilege of having counsel present during further proceedings.

CLERK, STENOGRAPHER, AND INTERPRETER.

269. Must be sworn.—With the sanction of the convening authority, a court-martial may avail itself of the services of a clerk, stenographer, or interpreter, but such person or persons shall in all cases be sworn.

270. Clerical assistance.—In all trials by general court-martial, where practicable and necessary, the convening authority shall direct that clerical assistance be furnished. In cases where there is no competent stenographer assigned to the court, it may require that all communications, motions, and questions be reduced to writing and read to the court.

Wherever practicable, the convening authority shall direct the senior officer present at the place where the court is to meet to detail clerical assistance from either the enlisted or civilian personnel under his jurisdiction. (See p. 369.)

When necessary, the convening authority may authorize the judge advocate to employ clerical assistance at market rates or less for stenographic reporting. In such cases an agreement is drawn up in duplicate between the judge advocate and the stenographer. One copy of this agreement is retained by the stenographer and the other is forwarded by the judge advocate to the Bureau of Supplies and Accounts, via the Judge Advocate General, together with bills for clerical assistance rendered in accordance therewith. (See pp. 369–370.)

271. Interpreter.—The services of an interpreter, where necessary, are secured in the same manner as is clerical assistance.

272. Expense to the Government must be authorized.—No expense to the Government by the employment of a clerk, stenographer, interpreter, or other person to assist in a trial by general court-martial should be allowed by the court, except when authorized by the convening authority.

273. Not present in closed court.—The clerk, stenographer, and interpreter, if needed, should be present when the court is open, but should not be allowed to be present in closed court.

THE PROVOST MARSHAL, GUARD, AND ORDERLIES.

274. Provost marshal.—An officer of the Navy not above the grade of lieutenant, or an officer of the Marine Corps not above the grade

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of captain, shall, upon proper application by the judge advocate of a general court-martial, be detailed by the commandant of the station or the senior officer present to serve as provost marshal of the court. In case of the trial of a petty officer or a person of inferior rating of the Navy, or a noncommissioned officer, musician, or private of marines, the provost marshal may be either a petty officer of the Navy or a noncommissioned officer of marines.

275. Duties of.—When an accused in close confinement or arrest is to be brought before the court, the order is sent by the president of the court to the accused's immediate commanding officer, through the provost marshal, who is responsible for such person in transit to and from the place of confinement and for his safe return to the proper custody when his presence is not required by the court. The accused should not be brought before the court in irons, unless there is good reason to believe that he will attempt to escape or to conduct himself in a violent manner; but the fact that an accused has been tried in irons can not, in any case, affect the validity of the proceedings.

Besides the above duties, the provost marshal serves notices to the witnesses and is in attendance generally as police officer of the court.

276. Guard and orderlies.—At the request of the judge advocate, the necessary guard and orderlies are detailed by the commanding officer of the ship or commandant of the yard or station on board of or at which the court is ordered to convene.

CHALLENGE.

277. Right of challenge.—The accused and the judge advocate have the mutual right of challenge. It is the duty of the judge advocate to ask the accused if he objects to any member of the court appointed to try him, and a minute of this inquiry and the answer thereto is invariably to be entered on the record. As a general rule, whatever objection either party may make to any member shall be decided upon before the court is sworn, but at any stage of the proceedings prior to the findings challenges may be made, either by the judge advocate or the accused, for cause not previously known. It is customary, though not required, that a member objected to should withdraw, after offering such explanations as he may believe necessary, and the court shall then be cleared and proceed to deliberate and decide upon the validity of the objection. The objection, the cause assigned, the statement, if any, of the challenged member, and the decision of the court shall be regularly and specifically entered on the record.

278. What constitutes a valid challenge.—A positive declaration by the challenged member that he is not prejudiced against the accused, nor interested in the case, is ordinarily satisfactory to the accused, and, in the absence of material evidence in support of the objection,

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will justify the court in overruling it. If, however, the statement is unsatisfactory or the member makes no response, the accused may offer testimony in support of his objection or may subject the challenged member to an examination by interrogatories. Courts should be liberal in passing upon challenges, but they will not entertain an objection that is not specific or upon the mere assertion of the accused, if it is not admitted by the challenged member. A challenge upon the ground, admitted or proven, that a member preferred the charges or is a material witness in support thereof, or that he has investigated the charges and expressed the opinion that they can be established, should be sustained by the court.

279. Court decides on challenges.—In the case of challenge, the decision of the court is final, and the party who challenges can not insist upon his challenge in opposition to the decision of the court. Members of courts are liable to challenge at the beginning of each distinct trial.

280. Examination on challenge may be on voir dire.—An examination on a challenge may be under oath on voir dire. See section 289.

281. When member, not challenged, considers himself disqualified.—The court of itself can not excuse a member in the absence of a challenge. An unchallenged member, who thinks himself disqualified, can be relieved only by application to the convening authority.

282. When court is reduced, by challenge, below legal quorum.—If, by challenges sustained, a court is reduced below the legal quorum, the convening authority should be notified as soon as practicable and the court adjourned awaiting the appointment of new members by the convening authority. A copy of the communication notifying that authority of the adjournment and the reasons therefor must be appended to the record.

OATHS.

283. When court is sworn.—Until a court is duly sworn (organized) according to law, it is incompetent to perform any judicial act except to hear and determine challenges against its members. After the right of challenge has been accorded and questions arising thereon have been decided, the oath or affirmation prescribed by law shall be administered in the presence of the accused: (*a*) By the president of the court to the judge advocate, (*b*) by the judge advocate to the members of the court, clerk (stenographer), and interpreter, and the record will so show.

284. To the judge advocate.—"You, A. B., do swear (*or* affirm) that you will keep a true record of the evidence given to, and the proceedings of, this court; that you will not divulge or by any means disclose

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the sentence of the court until it shall have been approved by the proper authority; and that you will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law." (A. G. N., 40.)

285. To members.—"You, A. B., C. D., E. F., etc., do each and severally swear (*or* affirm) that you will truly try without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the Navy, and your own consciences; that you will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; that you will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law." (A. G. N., 40.)

286. To the stenographer (clerk).—"You, A. B., swear (*or* affirm) faithfully to perform the duty of stenographer (clerk) in aiding the judge-advocate to take and record the proceedings of the court, either in shorthand or ordinary manuscript."

287. To the interpreter.—"You, A. B., swear (*or* affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the accused."

288. To witnesses.—An oath or affirmation in the following form shall be administered to all witnesses before any court-martial by the president thereof:

"You do solemnly swear (*or* affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you, God (*or*, this you do under the pains and penalties of perjury)." (A. G. N., 41.)

289. Oath on voir dire.—"You, A. B., swear (*or* affirm) that you will true answers make to questions touching your (the) competency (of _____) as a witness (member of the court) in this case. So help you God (*or*, this you do under the pains and penalties of perjury)." (See secs. 137 and 280.)

290. Manner of giving oath.—The usual manner of giving an oath is to require the party taking same to keep one hand upon a Bible while doing so. But it is not to be forgotten that the purpose of administering an oath is to impress the party being sworn with the solemnity of the ceremony, and, therefore, such ceremony may be undergone in giving the oath to a witness as may be recognized by whatever religious sect of which he happens to be a member.

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POSTPONEMENT.

291. Suspension of proceedings.—Either the judge advocate or the accused may request a postponement of the trial, stating his reasons for the request. But an application to suspend the proceedings of a court for a longer period than from day to day, Sundays excepted, must be referred to the officer convening the court, who alone has authority to grant such request. (See A. G. N. 45.)

ARRAIGNMENT.

292. Arraignment.—After the court has been organized, and both parties are ready to proceed, the judge advocate will read the charges and specifications separately, and in order, to the accused and ask him how he pleads to each, "guilty" or "not guilty." The order pursued in case of several charges or specifications will be to arraign on the first, second, etc., specifications to the first charge, then on the first charge, and so on with the rest.

293. On trials in joinder.—When two or more persons are tried in joinder, they should be separately arraigned; the questions constituting each arraignment and the answers thereto should be separately recorded; and throughout the trial the accused persons should severally be given the same opportunity to answer, plead, make objections, examine, be examined, submit a written defense or statement, etc., and the fact should in every instance be entered upon the record with the same particularity as in the ordinary case of the trial of one person only.

PRELIMINARY MOTIONS.

294. When made.—The accused, either himself or through counsel, may, before pleading to the issue, make a preliminary motion or plea.

295. Form of.—Such motion should ordinarily be in the form of a motion "to strike out," but the substance and not the form of the motion is what is to be considered. It may be upon various grounds, the purpose being to substitute the same in naval procedure for the technical pleadings known to civil procedure. Thus, it may be on the ground of—

296. A lack of jurisdiction.—An objection on the ground of lack of jurisdiction involves a question as to the legal authority of the court, such as:

(*a*) That it was convened by an officer having no legal authority to convene it. (See art. 38, A. G. N., and statutory enactments quoted thereunder.)

(*b*) That it is not legally constituted. (See secs. 219; 224.)

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(*c*) That the accused is not subject to the court's jurisdiction. (See sec. 25.)

(*d*) That the offense is not one cognizable by naval court-martial. (See sec. 26; see also C. M. O. 31, 1915, 6–10; 9, 1916, 5–6; 17, 1916, 5–8.)

Even though the accused fails to make objection to the jurisdiction of a court, and it be found upon reviewing a case that the court did for any reason lack jurisdiction, the defect is fatal and the findings and sentence of the court must be set aside. (See C. M. O. 17, 1916, 5–8.) Waiver of objection will never avail to confer jurisdiction upon a court not legally possessing it. (See sec. 28; C. M. O. 31, 1915, 6–10; and on subject of jurisdiction generally Ch. IV.)

297. The expiration of the statutory period of limitation.—The statute of limitations, as affecting persons subject to trial by naval courts-martial, is contained in articles 61 and 62, A. G. N. (See p. 44.)

Article 61, A. G. N., which fixes the limitation for proceedings in the cases of general offenses, excepts from its terms an offender who has not been amenable to justice during the statutory period "by reason of having absented himself, or for some other manifest impediment." Article 62, A. G. N., which fixes the limitation for desertion in time of peace, excepts an offender who "shall meanwhile have absented himself from the United States, or by reason of some other manifest impediment" shall not have been so amenable. For a construction of the language of the above exceptions see C. M. O. 27, 1913, 16–18.

The above articles do not operate to extinguish the offenses in cases where they apply, but merely give the accused in such cases a defense against trial therefor. It consequently follows that the burden falls upon the accused in every case in which he desires to avail himself of these articles, in addition to establishing that he comes within the provisions of same, to affirmatively establish that he is not within the above exceptions. Inasmuch as these statutes of limitations are matters of defense only, they may be waived by the accused.

A plea of guilty operates as such a waiver. But it is not imperative that the accused, in order to avail himself of this defense, do so by means of a preliminary motion to strike out; the limitation may equally be taken advantage of, under a plea of not guilty, by establishing this defense by evidence during the trial.

The fact that an accused offers as a defense the statute of limitations in no way challenges the jurisdiction of a court-martial to hear and determine the matter, but goes to the merits of the case, and is a matter to be determined by the court in the exercise of its jurisdiction. The court-martial has final determination of the question and its decision thereon is not reviewable in habeas corpus proceedings in the civil courts. (Ex parte Townsend, 133 Fed. Rep.,

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74.) On the whole subject of statute of limitations see C. M. O. 27, 1913, 13–18.

298. Former jeopardy.—The fifth amendment to the Constitution of the United States provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." This provision is the authority for the principle of law that no person shall be tried a second time for the same offense. In order, however, that a person on trial before a court martial may be given the benefit of this principle, it is necessary that he should have been actually *acquitted or convicted on a former trial.* That is, the former trial, on which an accused claims to have been placed in jeopardy, must have proceeded to a final acquittal or conviction in order to constitute former jeopardy. (C. M. O. 7, 1914, 5; 22, 1916, 6.) But, after the proceedings in a former trial have been carried to an acquittal or conviction, the jeopardy is complete and it matters not whether any action, or, if any, what action has been taken upon the proceedings by the reviewing authority.

Proceedings upon a "fatally defective" specification do not constitute former jeopardy. (C. M. O. 22, 1916, 6–8.)

Likewise, before there can be former jeopardy the court before which the former proceedings have been conducted must have been a duly constituted and legally competent court. (See C. M. O. 7, 1914, 8–9; and 31, 1914, 1–2; holding that the commanding officer of a naval vessel in imposing punishments is not a court.)

Also, the term "same offense" does not mean the same act. The same act may be an offense against more than one Government, as, for example, when one enlisted man assaults another within the territory of one of the States, it is an offense both against that State and against the United States. Moreover, the same act may be an offense against civil law and at the same time a separate and distinct offense against naval law. (Moore *v.* Illinois, 14 How., 20; Coleman *v.* Tennessee, 97 U. S., 509.) In this connection see section 27.

When a person has been once acquitted or convicted by a court of a certain offense, he is not subject to trial subsequently for a minor offense included therein. Likewise, when once tried for a minor offense an accused can not later be tried for a major offense of which it is a part, because to so do would be to twice place him in jeopardy for the minor offense. Thus, desertion includes absence without leave, and one having been acquitted or convicted of the former is not subject to later trial for the latter for the same act, and vice versa.

In order that an accused may avail himself of the defense of former jeopardy, he must take advantage of the same and move to strike out on this ground. If he waives it, the court will proceed with the case. When he wishes to avail himself of it, the production of the record of the former trial is the proper way to sustain such objection.

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299. A pardon.—A pardon, granted by one having legal authority to do so, exempts the individual on whom it is bestowed from the punishment which the law inflicts for a crime that he has committed, and may be offered in evidence to sustain a motion to strike out.

300. Procedure after a preliminary motion.—A preliminary motion to strike out, the grounds therefor, and evidence introduced both in support and against the motion should be fully entered in the record. If the motion be sustained, an extract of the proceedings of the court shall be forwarded to the convening authority and the court will meet from day to day awaiting further instructions from the convening authority, who may either accept the court's ruling and direct that the prosecution on the matter involved be discontinued or may return the record to the court for a reconsideration in the premises, with a statement of reasons therefor.

PLEAS TO THE ISSUE.

301. Pleas to the issue.—After preliminary motions, if any, have been disposed of, and if the trial is to proceed, the accused next pleads to the issue. Ordinarily the accused should enter a plea of "guilty" or "not guilty" to the specifications under each charge and then to the charge itself. This is known as a plea to the general issue. By a plea of "guilty" the accused admits, without proof, the averments of the charges and specifications. A plea of "not guilty," on the other hand, calls upon the prosecution to prove the averments of the charges and specifications. It does not, however, commit the accused to a denial of the facts alleged therein. An accused may well know that all the material averments against him are true, and yet may properly and without color of deception enter a plea of "not guilty."

302. "Guilty in a less degree than charged."—This plea is not looked upon with favor. Save in exceptional cases, a court-martial should try the accused for the offense as charged, and the judge advocate should produce all the available evidence. The acceptance of this plea by the court upon the advice of the judge advocate ordinarily indicates that the case has been tried out of court by the judge advocate, who has thereby been allowed to usurp the court's functions. (See C. M. O. 29, 1914, 6–7.)

303. Plea of nolo contendere.—In proceedings before a court-martial there is no difference in legal effect between a plea of *nolo contendere* and a plea of "guilty." The distinction lies in that such a plea can not be used against the accused as an admission of guilt in a civil suit for the same act. The necessity for the use of this plea before a court-martial should be rare. (In this connection see C. M. O. 26, 1910, 5–7.)

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304. "Guilty but without criminality."—A plea to this effect is contradictory on its face, as guilt can not be disassociated from criminality, and is therefore irregular and should not be accepted.

305. Accused stands mute.—If the accused for any reason stands mute, the court shall direct the trial to proceed as if he had pleaded "not guilty."

306. Procedure on plea of guilty.—Should the accused plead either "guilty" or "guilty in a less degree than charged," and should such plea be accepted, the president shall warn him that he thereby precludes himself from the benefits of a regular defense as to the matter thus admitted and ask if he persists in such plea.

307. Evidence in extenuation.—After the warning referred to above, should the accused persist in the plea of guilty, the court, before proceeding to deliberate and determine upon the sentence, shall allow him to urge anything he may desire to offer in extenuation of his conduct, to call witnesses as to character, or to offer any other evidence of a strictly mitigating nature; and the judge advocate shall have the right to cross-examine such witnesses and should introduce such evidence as he may have in rebuttal thereto. (See C. M. O. 39, 1915; see also sec. 214.)

308. Evidence after plea of guilty.—As by the plea of guilty everything alleged is admitted, no evidence shall, when such plea is offered, be given by the prosecution except as noted in the preceding section or where, in the judgment of the court, such a course be necessary in order to show all the circumstances of the offense, in which case the warning referred to in section 306 should be omitted.

309. Change of plea.—The accused may, at the discretion of the court, be allowed at any time before the trial is finished to substitute for a plea of guilty, or guilty in a less degree than charged, a plea of not guilty, or *vice versa*.

310. Rejection of plea.—If, after a plea of guilty in less degree, the court decides to proceed with the trial of the accused for the greater offense with which he is charged, such plea in less degree will be rejected and the accused advised by the judge advocate to substitute a plea of not guilty. Should the accused decline to plead thus, as advised, the court should direct the trial to proceed as if the plea of not guilty had been entered, and the prosecution shall be put to the proof of every allegation contained in the specification. The same procedure shall be followed if, after a plea of guilty, the accused sets up matter inconsistent with such plea. But should the accused desire to admit in open court any of the facts alleged in the specifications against him he may do so after having made a general plea of not guilty, and it will not be necessary for the prosecution to prove the admitted facts. (See sec. 111.)

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WITNESSES.

(See sections 122–177.)

STATEMENT OF ACCUSED—ARGUMENTS OF ACCUSED AND JUDGE ADVOCATE.

311. Accused may make statement.—An accused may, in any case where he so desires, make a statement not under oath. Such statement of the accused is a personal defense or declaration and can not legally be acted upon as evidence by the court, nor can it be a vehicle of evidence, or properly embrace documents or other writings or even averments of material facts, which, if duly introduced, would be evidence; and if through inadvertence or other cause such be improperly embraced in a statement, they are entitled to no evidential weight.

A statement may operate in three ways: (1) To modify the plea of the accused when inconsistent therewith (see sec. 312); (2) as a summary and argument for the defense, which may be considered by the court; and (3) as a plea for leniency, which may not be considered by the court except in recommending the accused to the clemency of the reviewing authority.

It is irregular and improper to have a statement sworn to. In order to bring out any facts or averments as sworn testimony in his defense, it is necessary that the accused himself, or a witness in his behalf, regularly take the stand and subject himself to cross-examination.

312. When statement is inconsistent with the plea of the accused.—It sometimes happens that an accused, unfamiliar with the effect of his plea, will plead guilty, and, without the introduction of evidence, will submit to the court a statement inconsistent with his plea; as, for example, when an accused, charged with desertion, pleads guilty and then submits a statement wherein he denies that he had at any time an intention permanently to abandon the service. Upon the submission of such a statement, the procedure outlined in section 310 will be followed.

313. Arguments.—In every case both the accused (counsel) and the judge advocate shall be afforded an opportunity to present an argument before submitting their respective cases to the court. The judge advocate is always entitled to the closing argument. (See, in this connection, C. M. O. 51, 1914, 3.)

314. Character of arguments.—A reasonable latitude should be allowed the judge advocate and accused (counsel) in their closing arguments. The testimony and any animus on the part of witnesses,

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the conduct, motives, and evidence of malice on the part of those upon whose complaint the accused is being prosecuted, may, in so far as it is based upon matters disclosed by the proceedings, be commented upon. But the court should not permit such argument to be made the vehicle of abuse not bearing upon the merits of the case and not supported by matters contained in the record.

315. When statement and arguments may be oral.—When the court has the services of a competent stenographer the statement and arguments may be oral. When so made they are entered in the record as a part of the proceedings.

316. When statement and arguments must be written.—Unless the clerk be a competent stenographer or there be a stenographer detailed to the court, the statement and arguments must be written before delivery. In such cases the statement or arguments so made shall be appended to the record.

317. Oral arguments upon the admissibility of evidence and upon interlocutory proceedings.—Oral arguments upon the admissibility of evidence and upon interlocutory proceedings may be allowed, but shall not be recorded; briefs of such arguments, if prepared at his own expense and subsequently submitted to the court by the party who made the same, shall be appended to the record.

FINDINGS.

318. Method of arriving at findings.—The court is closed to deliberate upon its findings. In arriving at same the plea of the accused, the evidence adduced, and the arguments made, are to be carefully considered. After the court has sufficiently deliberated, the president of the court shall, upon each specification of each charge, beginning with the first, put the question whether the specification is "proved," "not proved," or "proved in part." Each member shall write "proved," "not proved," or "proved in part"—and if so, what part—over his signature, and shall hand his vote to the president of the court. The latter, after he has received all the votes upon each specification, shall read them aloud without disclosing how each member voted. Likewise, after the members have voted upon all the specifications of any charge, they shall in the same manner vote as to whether the accused is of such charge "guilty," "not guilty," or "guilty in a less degree than charged"—and if so, in what degree. No written minute of the votes shall be preserved, unless so ordered by the unanimous vote of the court. The decision of a majority becomes the finding of the court. When there is a tie vote upon any of the findings, the accused is given the benefit thereof and the result is recorded in that way which is the more favorable to the accused.

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319. When accused pleads guilty.—When the accused pleads guilty, the proper finding is, for the specification, "proved by plea," and for the charge, simply "guilty."

320. When specification is found "proved in part."—The court may find a specification "proved in part," and then, if the specification still supports the charge, find the accused guilty of the charge. (See, in this connection, C. M. O. 38, 1916, 2.)

321. "Guilty in a less degree than charged."—If the evidence proves the commission of an offense less in degree than that specified, yet included in it, the court may except the words of the specification, substitute others instead, pronouncing what words are not proved and what words are proved, and then find the accused guilty in a less degree than charged, guilty of the lesser included offense. Of this form of finding the most familiar example is the finding of guilty of "absence from station and duty without leave (or, after his leave had expired)" upon a charge of "desertion." In such a case, in its finding of "proved in part" upon the specification, the court should expressly except the words "desert" and "in desertion," and substitute therefor, respectively, the words "absent himself without leave" and "so absent," if such be the lesser included offense found proved. In such event the finding upon the charge should be "guilty in a less degree than charged, guilty of absence from station and duty without leave."

322. When finding is "Not guilty."—In case the finding is "Not guilty" upon any charge, the explicit statement should immediately follow that the court acquits the accused of such charge.

323. Forms of acquittal.—The following forms of acquittal, and no others, are permitted in naval procedure:

"*The court does, therefore, acquit.*"—This form, known as a *simple acquittal*, should be used in all cases except in the few special cases to be hereinafter mentioned under other forms of acquittal. The use of this form sufficiently records the fact that the court has not sustained the charge and has the same legal effect as an acquittal expressed with some embellishment.

"*The court does, therefore, fully acquit.*"—The use of this form of acquittal indicates that a court not only fails to find a charge proved beyond a reasonable doubt, but that it finds no facts whatever, as brought out by the evidence introduced in the case, which reflect adversely on the conduct of the accused in connection with matters pertaining to the charge and specification. In other words, a court should not "fully acquit" in cases where the record shows any uncontroverted facts whatever reflecting upon the accused.

"*The court does, therefore, honorably acquit.*"—This form is to be employed only in cases where the offense charged is, besides being an

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offense against military authority, of such a character that a conviction thereof would tend to dishonor the accused, such as, for example, a charge of "conduct unbecoming an officer and a gentleman." This acquittal, as in the case of a full acquittal, should never be used if the record shows any adverse reflection whatever upon the accused.

"*The court does ,therefore, most fully and honorably acquit.*"—This form should be used only in extreme cases in which not only have the requirements of a "full" and "honorable" acquittal been fulfilled, but in which the court wishes to place the highest stamp of approval upon the actions of the accused in connection with matters covered by the specifications. The use of this form of acquittal might, for example, be justified in the case of an officer charged with unbecoming conduct in battle if the court wished to make it a matter of record that, far from considering the conduct of such officer censurable, it both approved and commended his conduct. For examples of an improper use of this form of acquittal see C. M. O. 5, 1913, 2–3; 27, 1913, 9; and 41, 1915, 11.

It will be noted that there is no *legal* distinction between a simple acquittal and one to which one of the additional expressions above quoted has been added, and it is to be emphasized that only in exceptional cases is the use of any form of acquittal, other than the simple "acquit," justified. Unless this rule be strictly adhered to and other forms of acquittal reserved for special cases, the distinction drawn above will soon be lost, and not only would a simple acquittal be robbed of its full absolving significance, but also the proper purposes for which the other forms of acquittal are reserved would be defeated.

324. Finding and sentence of persons tried in joinder.—When two or more persons are tried in joinder, the finding and sentence (or acquittal) in the case of each person arraigned and tried should be separately recorded.

325. Findings to be recorded in handwriting of judge advocate.—After the court has arrived at its findings the judge advocate is recalled and directed to record the same. They must be entered on the record in the handwriting of the judge advocate and must be free from interlineations and erasures. This direction applies to the *entire* findings. This includes everything which properly forms a part of the findings, commencing with the words, "the (first) specification of the (first) charge."

Record of Previous Convictions.

326. When introduced.—The judge advocate shall, immediately after recording the finding, except where such finding has resulted in an acquittal, state whether or not he has any record of previous convic-

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tions. If not, an entry to this effect shall be made in the record, but the court need not be reopened. If there be such record, the court shall be opened and the same shall be submitted to the accused for opportunity to object to its admission. If there be no valid objection, the same shall be read by the judge advocate in the presence of all parties to the trial.

327. Record of such convictions only as have been approved by proper authority admissible.—The record of a previous conviction, to be admissible, must show that such conviction was approved by the authority whose action was requisite to give effect to the sentence. If the conviction was approved by such authority, it is admissible even though the sentence of the court may have been remitted either in whole or in part. (C. M. O. 29, 1914, 5.)

328. Must relate to current enlistment—exceptions.—The general rule is that the record of previous convictions, in order to be admissible, must relate to the current enlistment of the accused, if an enlisted man. But, in the cases of men serving under extended enlistments, convictions occurring prior to the expiration of the four-year term of enlistment, or prior to the current extension of such enlistment, shall not be considered as having occurred during their current enlistment. On the other hand, when the last enlistment was terminated by sentence of court-martial or by discharge as undesirable by order of the department, all convictions occurring in the prior enlistment thereby terminated are admissible. (See C. M. O. 29, 1914, 4–5.)

329. Previous convictions while serving in Army.—Record of previous convictions by courts-martial while serving an enlistment in the Army is not admissible as record of previous convictions before naval courts-martial. But, in the cases of enlisted men of the Marine Corps who have been detached for service with the Army by order of the President, it has been held that convictions by Army courts under Army Regulations shall be regarded as previous convictions, subject to the regulations governing record of previous convictions.

330. What extract of record read shall show.—The extract from the current service record of the accused showing record of previous convictions, which should in the absence of objection be read by the judge advocate, should include the offense committed, the fact and nature of the trial, conviction, sentence, and approval by the proper authorities, together with the dates of the offense, trial, and approval.

331. Court-martial orders.—A printed court-martial order is *prima facie* evidence of its contents, and may, in the absence of objection, be introduced in officers' cases as a record of previous conviction.

332. How record of previous convictions is introduced when objected to.—Record of previous convictions, if objected to by the accused,

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should be introduced in the same manner as evidence and is subject to the rules of evidence; it is generally documentary in form, and, as a rule, is forwarded by the convening authority to the judge advocate, together with the other papers in the case. The court will rule whether or not the record shall be admitted.

333. Record of previous convictions admissible in revision.—In cases in which the accused has first been found not guilty by the court, but in revision the court revokes this finding and substitutes therefor a finding of guilty, the record of previous convictions should be introduced during the proceedings in revision; such record of previous convictions not being evidence or testimony in the legal sense, which refers to matter tending to establish the guilt or innocence of the accused upon the charge rather than to matter introduced, after the trial has been finished, for the sole purpose of being considered by the court in arriving at its sentence. In such cases the accused must of course be present when the evidence of previous convictions is introduced. (C. M. O. 29, 1914, 5.)

334. Copy appended to record.—A copy of the record of previous convictions read to the court shall be appended to the record.

SENTENCE.

335. Punishment to be adjudged.—It is made by law the duty of courts-martial, in all cases of conviction, to adjudge a punishment adequate to the nature and degree of the offense committed. (A. G. N. 51.) In so doing due regard must be had for the requirements of the Articles for the Government of the Navy and the limitations prescribed by the President for punishments in time of peace. (See sec. 390.) Sentences must be neither cruel nor unusual, and must be in accord with the common law of the land and the customs of war. In cases where a statute has designated a penalty for a particular offense, none other than that particular penalty may be imposed, and the court must pronounce the sentence which the law requires whenever the fact is proved. (See, for example, R. S. 3652, quoted in U. S. Navy Regulations, 1913, R-4316.)

336. Method of arriving at sentence.—When the court has been closed for the purpose of determining the sentence, each member shall write down and subscribe the measure of punishment which, subject to the provisions in the preceding section, he may think the accused ought to receive, and hand his vote to the president, who shall, after receiving all the votes, read them aloud. Except in the case of a death sentence, which requires the concurrence of two-thirds of the members present, all sentences may be determined by a majority of votes. (See A. G. N. 50.) If the requisite number do not agree upon the nature and degree of the punishment to be inflicted, the president

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proceeds in the following manner to obtain a decision: He shall begin with the mildest punishment that has been proposed, and after reading it aloud shall ask the members successively, beginning with the junior in rank, "Shall this be the sentence of the court?" And every member shall vote, and the president shall note the votes. Should there be no decision, the president shall, in the same manner as before, obtain a vote on the next mildest punishment, and shall so continue until a sentence is decided upon. A tie vote on any sentence should be reconsidered, with a view to obtaining a majority either for or against, before passing on to the next sentence.

337. Death sentence—when adjudged.—The death sentence may be adjudged only in cases where such punishment is expressly provided in the Articles for the Government of the Navy. (A. G. N. 50.) Such sentence may be carried into execution only upon the confirmation of the President. (A. G. N. 53.)

338. Dismissal.—A sentence of dismissal may be adjudged in the case of an officer, but in time of peace such sentence may be adjudged only in such cases as the limitations of punishment prescribed by the President permit. A sentence to dismissal can be carried into execution only upon the confirmation of the President. (A. G. N., 53.)

339. Dismissal to precede imprisonment of an officer.—In all cases where an officer is sentenced to imprisonment the sentence shall provide for his dismissal prior thereto.

340. Loss of pay.—Sentences which include forfeiture of pay shall, in the cases of officers, state the rate of pay to be lost and the time of such forfeiture.

341. Restriction.—A court may sentence an officer or enlisted man to be restricted to the limits of a ship, post, or station for a specified period. This form of sentence is usually accompanied by a forfeiture of pay.

342. Loss of numbers.—An officer may be sentenced to a loss of numbers. When an officer's position on the Navy Register will not permit of his losing the adjudged numbers in grade, the court shall place him at the foot of the list, with the proviso that he is to remain in that position until he has lost the required numbers.

343. Loss of seniority.—In the cases of warrant officers, where promotion is based upon length of service in grade, loss of seniority for a specified period of time should be adjudged in lieu of a loss of numbers.

344. Public reprimand—not favored.—The sentence of public reprimand, while legal, is not regarded with favor by the department in cases where the limitations prescribed by the President permit of other punishment.

345. Sentence of suspension—not favored.—The undesirability of adjudging a sentence of suspension, with full or with reduced pay, has

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frequently been commented upon by the department. This sentence is objectionable because it is detrimental to the interests of both the officer and the Government. This form of punishment may, however, legally be imposed for any offense committed by an officer where the penalty is discretionary with the court, and the term of suspension may be for any stated period. Also, the President may mitigate a sentence of dismissal to suspension for a limited time. (5 Op. Atty. Gen., 43.) There are properly two kinds of suspension—suspension from rank and suspension from duty, and sentences including suspension must state whether from rank or from duty only. The former operates to deprive an officer, during the period specified, of the right to promotion and of all the other rights and privileges incident to his rank; the latter merely deprives him of authority to give orders to or exact obedience from his inferiors.

346. Reduction in rating should be included in sentences of petty officers involving confinement.—In all cases in which the sentence imposed on a petty officer involves confinement, it should include reduction to one of the ratings below petty officer in the branch to which he belongs, and in the case of a noncommissioned officer of the Marine Corps to private. (But see sec. 347.) Reduction to seaman gunner is applicable only in cases of men holding a certificate as such. (C. M. O. 30, 1912, 6.)

347. Summary court punishments may be adjudged.—General courts-martial are empowered by statute to adjudge any of the punishments authorized for summary courts martial. (A. G. N. 35.) As it is the practice of the department to cause all summary court-martial sentences adjudged by general court-martial to be carried into execution at the place where the prisoner may be serving, and in the same manner as if the sentence had been adjudged by summary court-martial, the desirability of reduction in rating does not apply as in the case of other prisoners, and may be omitted in the discretion of the court. (See sec. 346.)

348. Form of sentence including confinement at hard labor.—Sentences of general courts-martial in the cases of enlisted men of the Navy and Marine Corps, which include confinement at hard labor, will ordinarily be in the following form:

The court, therefore, sentences him, ——— ———, ———, United States ———, (to be reduced to the rating (rank) of ———), to be confined for a period of ——— (then to be dishonorably discharged from the United States naval service, or to be discharged from the United States naval service with a bad conduct discharge), and to suffer all the other accessories of said sentence, as prescribed by section 349, Naval Courts and Boards.

349. Meaning of "Other accessories of said sentence."—The words "other accessories of said sentence," when used in the sentence of a general court-martial, shall be understood to include the following:

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The person so sentenced shall perform hard labor while confined pursuant to such sentence, and after his accrued pay (and allowances in the case of an enlisted man of the Marine Corps) shall have discharged his indebtedness to the United States at the date of approval of such sentence, shall forfeit all pay (and in the case of an enlisted man of the Marine Corps sentenced to dishonorable (bad conduct) discharge, all allowances) that may become due him during a period equivalent to the term of such confinement (or, if sentenced to dishonorable (bad conduct) discharge, during his current enlistment), except the sum of $3 per month during such confinement for necessary prison expenses, and if dishonorably discharged (discharged with bad conduct discharge) pursuant to such sentence, a further sum of $20 to be paid him when discharged.

(In cases of fraudulent enlistment, when a man has been enlisted in both branches of the service, and has not been discharged from either, the sentence shall read as in section 348. Under such a sentence the Department will cause the man to serve sentence under his proper enlistment, and, should this enlistment be in the Navy, the loss of allowances will be remitted.)

350. Discharge alone may be adjudged.—A general court-martial may sentence an enlisted man to a dishonorable (bad conduct) discharge alone, without adjudging a period of confinement and "other accessories."

351. Terms of imprisonment to be defined.—A sentence of imprisonment must express distinctly for what period the same shall continue.

352. When sentence involves confinement.—The term of confinement shall take effect from the date of approval of the sentence. Should an unusual time elapse between the date of confinement of the accused for trial and the date of approval of the sentence, this period may be considered by the convening authority as a ground for mitigation in acting upon the case. Should the sentence be to solitary confinement, or to confinement on reduced rations, the time of such conditional confinement must be fulfilled unless such provision of the sentence be remitted or mitigated by the convening or higher authority.

353. Confinement on bread and water.—Courts-martial shall exercise care and discretion in resorting to the punishment of confinement on bread and water, and shall not adjudge it in any case for a longer period, consecutively, than five days. As a shorter interval on bread and water is less liable to work injury to health, the maximum interval allowed should be adjudged only in extreme cases. (See sec. 364.)

354. Judge advocate to be recalled to record the sentence.—When a sentence has been determined upon, the judge advocate shall be called before the court, and, under its direction, shall draw up the sentence, specifying the exact nature and degree of the punishment adjudged, and, after approval by the court, shall enter the same on the record. But it must not appear on the record what number of members voted

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for the sentence, except that, in the case of a death sentence, the record must explicitly state that such sentence was adjudged with the concurrence of two-thirds of the members present.

355. Manner of recording sentence.—The sentence must be recorded in the judge advocate's own handwriting, and must be free from erasures and interlineations. Numbers in the sentence shall be expressed both by words and by figures.

356. Authentication of sentence.—After the sentence has been recorded, the law requires that the proceedings in each separate case tried by the same court be signed by all the members present when judgment is pronounced, and also by the judge advocate. (A. G. N. 52.) In case of a member dying before signing, the signatures of the remaining members will be sufficient. (C. M. O. 12, 1915, 8.)

Recommendation to Clemency.

357. Recommendation to clemency.—The power to pardon, remit, or mitigate is expressly vested in the President of the United States or the convening authority. But, if mitigating circumstances have appeared during a trial, which could not be taken into consideration in determining the degree of guilt found, the members of the court, individually and not as a body, may avail themselves of such circumstances as grounds for recommending the accused to clemency. In so doing the members signing the recommendation should set forth explicity their reasons for making such recommendation. This recommendation is recorded immediately after the signatures of the members of the court and the judge advocate to the sentence, and is signed by the members concurring in it.

Record of Proceedings.

(See Chapter VII.)

358. In general.—Every court-martial will keep an accurate record of its proceedings. The record of proceedings in each case tried shall set forth the names of the members of the court who were present during the trial; that the accused was furnished a copy of the charges and specifications against him; that the precept was read aloud in the presence of the accused; that he was afforded an opportunity to challenge members; and that the members, judge advocate, clerk (stenographer), and witnesses were duly sworn. It shall further show the arraignment, preliminary motions, pleas, objections and grounds therefor, all testimony taken and documentary evidence received, decisions and orders of the court, adjournments, statement and closing arguments, findings, and sentence or acquittal; in short,

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the entire proceedings of the court which are necessary to a complete understanding by the reviewing authority of the whole case and every incident material thereto. In this connection see section 317.

Each case is thus made complete in itself and the record continuous. When all the cases laid before the court have been finished and severally authenticated, and forwarded, the president shall, unless otherwise directed by the convening authority, inform the said authority by letter that all the business before the court has been completed, and the court shall adjourn to await the action of the convening authority.

For detailed instructions concerning the manner of making up court-martial records, see Chapter VII.

359. Questions numbered.—The questions asked each witness shall be numbered consecutively throughout the examination. If the examination is interrupted by recess or adjournment and is resumed when the court reassembles or reconvenes, the numbering shall be continued. If, however, the first examination of the witness is completed, and, later in the trial, he is recalled, the numbering of the questions asked on this later examination shall begin anew.

360. Questions and answers paragraphed.—Each question and answer of a witness shall begin a new paragraph.

361. Recess or adjournment.—When the business of the court is suspended from one day to the next, or for a longer period, the record shall show that the court *adjourned* until the time agreed upon; but when the period of suspension of business is from one part of a day to another part of the same day, the record should show that a *recess* was taken for the time mentioned.

362. Reading the record.—In reading the record of the previous day upon the opening of the court on each successive day the salient features of the proceedings only need be read; it is not necessary at this time to read the testimony recorded. The ruling of the court on questions submitted for decision should be read. Before the trial is finished the record up to that point must have been approved.

363. Presence of accused during subsequent reading of record.—If the court adjourns after arriving at a finding and sentence (or acquittal) to meet the next day for the purpose of verifying the record, the record of proceedings of the succeeding day should distinctly show that the accused was present during the reading of so much thereof as referred to the proceedings in open court, that he then withdrew, and that the court was cleared, the judge advocate remaining, whereupon that part of the record which pertained to the proceedings in closed court was read.

364. Medical certificate must be attached in certain cases.—Whenever any person is sentenced for a period exceeding 10 days to confine-

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ment on diminished rations, or on bread and water, there must appear on the record of proceedings the certificate of the senior medical officer under the immediate jurisdiction of the convening authority, to the effect that such sentence will not be seriously injurious to the health of the prisoner. (In this connection, see A. G. N. 33.)

365. Completion of record.—After the proceedings and sentence, with the recommendation to clemency, if any, have been signed, the action of the court, whether an adjournment or the taking up of a new case, shall be recorded; after this entry has been authenticated by the signatures of the president and the judge advocate, the record is completed.

366. Copy of record for accused.—The accused is entitled to a certified copy of the proceedings of a general court-martial. Such copy should contain a record of all the proceedings except the findings, sentence, recommendation to clemency, and action of the convening authority. These latter may be obtained by him, however, upon application to the Department after the proceedings have been consummated by proper authority.

367. Duty of judge advocate to furnish copy to the accused.—The judge advocate should, at the beginning of a trial, inquire of the accused if he desires a copy of the record of proceedings. If so, the record shall be made in duplicate and a copy furnished the accused at the completion of his trial. If not, the judge advocate shall secure from the accused a waiver of his right to a copy of the proceedings. Should the accused waive his right to a copy of the record at the time of his trial, he can not afterwards demand a copy.

368. Notation on cover page.—The fact that a copy of the record has been furnished the accused, or that he has waived his right thereto, shall be noted on the cover page of the case.

369. Waiver or receipt appended.—The waiver of the right to a copy of the proceedings, or when a copy is furnished a receipt therefor, shall in each case be the last document appended to the record. (See p. 382.)

370. Final disposition of records.—The records of proceedings of all courts-martial shall be forwarded direct to the Judge Advocate General by the reviewing authority, after acting thereon, or, in the case of general courts-martial convened by the Secretary of the Navy, by the presiding officer of such courts.

371. Letters of transmittal not required.—Letters of transmittal are not required in forwarding to the Department records of proceedings of courts-martial and other courts and boards.

REVISION.

372. Revision must be before dissolution of court.—Upon the receipt of the record of a court-martial, the reviewing authority shall pro-

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ceed at once to examine the same, in order that it may be returned for revision, if such course be necessary, before the dissolution of the court.

373. Legal quorum required for revision.—Should the reviewing authority decide to reconvene the court in order to amend or otherwise remedy a defect or omission in the record, or for a reconsideration of its finding or sentence, which may be done when the facts warrant, the record shall show that at least five members of the court which sat upon the trial and a judge advocate are present. A correction can not be made unless there is a legal quorum present. So long as this essential be fulfilled it is not necessary to the legality of the proceedings that all the members present at the original trial be present at the reassembling of the court.

374. The judge advocate on revision.—It is not necessary that the same judge advocate officiate on the revision of a case as took part in the original proceedings. If a new judge advocate be detailed, however, the orders of the convening authority, modifying the precept in that respect, shall be read and a copy prefixed to the record in revision. Also, the order convening the court in revision should not be read until after the new judge advocate has been sworn.

375. No new evidence admissible.—When a court is ordered to revise its proceedings, new evidence shall not be admissible. (But see sec. 333.)

376. Record in revision.—During a revision an entirely separate record shall be kept, to which the order for reassembling must be *prefixed*, and which shall itself be *prefixed* to the record of which it is a revision. A full entry shall be made of all the proceedings, verified in the ordinary manner by the signatures of all the members of the court present and the judge advocate, and transmitted, as before, to the reviewing officer for his approval.

377. Clerical errors or omissions, how corrected.—Clerical errors or omissions in the original record may be amended by the court in revision without the presence of the accused, but they are not to be corrected in an informal manner by erasure or interlineation. The legal procedure is for the proper officer to reconvene the court, calling its attention in the order for reassembling to the error requiring correction, and for the court, on reassembling, to decide as to the correction to be made, and to incorporate it as a part of the record of proceedings in revision.

378. Presence of the accused.—It is not in general necessary or desirable that the accused be present at a revision. When, however, any possible injustice may result from his absence, he should be required or permitted to be present with counsel, if desired. Thus, where the defect to be corrected consists in an omission properly to

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set forth a motion made or an objection taken by the accused, it may be desirable that he should be present in order that he may be heard as to the proper form of the proposed correction. But where the error consists in the omission of a formal statement only, or a reconsideration of the findings or sentence on the record as it stands is what is required, the presence of the accused is not in general called for.

379. Copy of record in revision for accused.—The accused is entitled to an exemplified copy of the record in revision to the same extent as he is to a copy of the original proceedings. (See sec. 366.)

380. Finding and sentence revised in closed court.—The court will be closed during a revision of the finding and sentence.

381. Revision affecting finding and sentence—Court's action to be in handwriting of judge advocate.—The finding (sentence) in revision must be in the handwriting of the judge advocate. In a revision of a case the statement, "The court does respectfully adhere to its former finding (sentence)," is equivalent to a rewriting of the finding (sentence), and shall be in the handwriting of the judge advocate.

Reviewing Authority.

382. Execution of sentence.—No sentence of a general court-martial may be carried into execution until the entire proceedings have been reviewed and the sentence duly approved. The approval of the convening authority is sufficient except for certain sentences before the execution of which the approval of higher authority is required by law. (See A. G. N. 53.) When the confirmation of a sentence requiring the approval of higher authority is desired, the record should be forwarded to the next higher reviewing authority by the convening authority with his approval indorsed thereon.

383. "Reviewing authority" defined.—Any officer to whom the proceedings of a court-martial are regularly submitted for review in accordance with law is a reviewing authority. When, as is ordinarily the case, such officer is the convening authority, this latter term should, in order to avoid confusion, be used in referring to him even while exercising the functions of a reviewing authority.

384. Power of reviewing authority.—See A. G. N. 54 and act of February 16, 1909, quoted under A. G. N. 33, as to the power of the reviewing authority to remit or mitigate. In connection with the exercise of this power, see General Order No. 110 (revised) and article 4893, Naval Instructions, 1913, and C. M. O. 3, 1917, 4–5, to be considered in connection therewith. When, however, the reviewing authority desires neither to approve the record of a court nor to exercise his power to remit or mitigate, his power is limited to returning the record to the court for revision and reconsideration in

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any features which he may deem to merit the same, and, in the event of the court's adherence to its former conclusions, to a disapproval of the same. It is not in the power of the reviewing authority to compel a court to reverse its decision upon a motion or plea, or to change its findings or sentence, when, upon being reconvened by him, it has declined to modify the same, nor either directly or indirectly to enlarge the measure of punishment imposed by sentence of a court-martial. When the proceedings, findings, or sentence of a court are illegal, the reviewing authority should set aside the same.

385. Effect of disapproval.—The disapproval of the findings or sentence of a court-martial by the legal reviewing authority is not a mere expression of disapprobation, but has the legal effect of entirely nullifying the same. Thus a reviewing authority can not disapprove a sentence and then proceed to mitigate the same or carry it into effect in any way, for, after disapproval, there is nothing left to mitigate or carry into effect.

386. Reviewing power vests in office of authority so acting.—The reviewing power, as well as the convening power, of a general court-martial vests in the office, not in the person, of the authority so acting. Thus, when the reviewing power is vested in the convening authority and the officer who has ordered the court has been relieved or is absent, it is competent for his successor in office, whether temporary or permanent, to act as reviewing authority.

387. Publication by court-martial orders.—The finding and sentence of every general court-martial approved by an officer having authority to order such court shall be communicated by him in a court-martial order to his command. Should the proceedings of such court-martial be disapproved in any particular for any informality or irregularity of the court, the particular informality or irregularity shall be made known in the court-martial order promulgating the result of the trial, so as to prevent, if possible, a recurrence of similar errors.

388. Designation of prison.—Officers authorized by law to convene general courts-martial are empowered to designate prisons for the confinement of men so sentenced. In the absence of instructions directing otherwise, prisons will be designated as follows:

(*a*) Those convicted by courts convened by officers in Atlantic waters—the naval prison at the navy yard, Portsmouth, N. H.

(*b*) Those convicted by courts convened by officers in Pacific waters—the naval prison at the navy yard, Mare Island, Cal.

(*c*) Those convicted by courts convened by officers in Asiatic waters—the naval prison, Cavite, P. I. In cases tried at Guam, the commandant may, in his discretion, designate the naval prison at the navy yard, Mare Island, Cal., in lieu of Cavite.

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But, in all cases where it is more practicable to transfer a prisoner by means of a convenient Government conveyance to a receiving ship or naval station other than those designated above, such prisoner shall be so transferred for temporary confinement, awaiting an opportunity for his further transfer to the prison designated.

The convening authority, after acting upon a case, will order transportation and send the prisoner, under proper guard, to the designated prison at the earliest practicable date—or, if practicable, by the earliest Government conveyance—notifying the commandant at the navy yard or station at which the designated prison is located, by letter, stating the offense, sentence, action of the convening authority, and date of such action. A similar letter shall be sent to the Auditor for the Navy Department, giving the same data, and in cases of desertion and absence without or over leave, additional information showing the dates of beginning and ending of unauthorized absence. The service records and pay accounts, or staff returns, of such prisoners should accompany them.

Notation shall be made on the face of the court-martial record (cover sheet) in the office of the convening authority that the above mentioned letters have been sent, with the date, thus: Letters to commandant, navy yard, Portsmouth, N. H., and auditor (date). The action of the convening authority shown on the record of the case as forwarded to the Judge Advocate General, will be sufficient notification to the Department as to the designated place of confinement.

Dissolution of Court.

389. Court dissolved.—A general court-martial is dissolved by the order of the authority who convened it. When so dissolved, it can not legally be reconvened. (See C. M. O. 4, 1914, 4–5.)

Limitation of Punishment.

390. The following limitations to the punishment of officers and enlisted men of the Navy and Marine Corps in time of peace, by naval general courts-martial, for each separate offense, have been prescribed by the President of the United States, and shall not be exceeded. They give the maximum limit of punishment for the offenses named, and that limit is intended for those cases in which the most severe punishment should be adjudged. Members of courts-martial should bear in mind the fact that these limitations are for *each separate offense*, not for each separate charge, and for several separate and distinct offenses, even though they be under the same charge, the court may, at its discretion, where the circumstances warrant such severity, adjudge in its sentence the limit of punishment for each separate and distinct offense. For example, the limitation of punishment for drunkenness, in the case of an enlisted man, is confinement for six months. If there happen to be two distinct

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offenses under the charge of drunkenness, and the court finds both specifications proved, the court may, at its discretion, impose a sentence of confinement for one year.

Offenses not provided for herein remain punishable as authorized by the Articles for the Government of the Navy and the custom of the service.

Loss of pay and allowances due, or that may become due during confinement, as the case may be, excepting a sum not to exceed three (3) dollars a month for prison expenses and a further sum not to exceed twenty-five (25) dollars to be paid upon discharge if sentenced to discharge from the service, may be added to any one of the following limitations:

If, in the case of a commissioned or warrant officer, the maximum sentence, under the following limitations of punishment, extends to dismissal, and if, upon the trial, oral testimony can not be obtained, by reason of which fact the record of proceedings of the court of inquiry, upon whose findings such trial is wholly or partially based, is used in evidence, the maximum punishment which may be imposed shall not extend to dismissal, but shall, instead, be limited not to exceed the loss of 100 numbers in rank. (See, in this connection, C. M. O. 46, 1917.)

In any case where it is necessary to use depositions at the trial thereof, and depositions are so used, the maximum punishment under such circumstances shall in no case exceed imprisonment or confinement for one year. (See C. M. O. 11, 1916, in which the Department, as a matter of policy, did not approve a sentence of dismissal in the case of an officer where a deposition had been used in securing conviction.)

In all cases where the following limitations of punishment provide for confinement, hard labor during such confinement shall be included.

Offenses.	Limit of punishment.
UNDER ARTICLE 3.	
Irreverent or unbecoming behavior during divine service.	Officer: To lose three numbers. Enlisted man: Confinement for three months.
UNDER ARTICLE 4.	
Making or attempting to make, or uniting with, any mutiny or mutinous assembly.	Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
Being witness to or present at any mutiny, does not do his utmost to suppress it.	Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
Knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer.	Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
Disobeying lawful order of superior officer.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.

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Offenses.	Limit of punishment.
UNDER ARTICLE 4—Continued.	
Striking, assaulting, or attempting or threatening to strike or assault his superior officer while in the execution of duties of office.	Officer: Dismissal and imprisonment at hard labor for five years. Enlisted man: Imprisonment at hard labor for five years and dishonorable discharge.
Sleeping on watch or post: 1. Officer of the watch. 2. Sentinel. 3. Lookout. 4. Petty or noncommissioned officer on watch or guard.	1. Dismissal. 2. Confinement for one year and dishonorable discharge. 3. Confinement for one year and dishonorable discharge. 4. Confinement for one year and dishonorable discharge.
Leaving station or post before being regularly relieved: 1. Officer. 2. Petty or noncommissioned officer. 3. Sentinel. 4. Lookout.	1. Dismissal. 2. Confinement for one year and dishonorable discharge. 3. Confinement for one year and dishonorable discharge. 4. Confinement for one year and dishonorable discharge.
Intentionally or willfully suffering a vessel of the Navy to be run upon a rock or shoal, or to be improperly hazarded.	Officer: Dismissal and imprisonment at hard labor for twenty years. Enlisted man: Imprisonment at hard labor for twenty years and dishonorable discharge.
Unlawfully setting on fire or destroying public property not in possession of pirate, enemy, or rebel.	Officer: Dismissal and imprisonment at hard labor for twenty years. Enlisted man: Imprisonment for twenty years at hard labor and dishonorable discharge.
Refusing to obey the lawful order of superior officer.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Maliciously or willfully injuring any vessel of the Navy or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or lives of crew exposed to danger.	Officer: Dismissal and imprisonment at hard labor for fifteen years. Enlisted man: Imprisonment for fifteen years at hard labor and dishonorable discharge.
UNDER ARTICLE 6.	
Murder.	Officer: Death. Enlisted man: Death.
UNDER ARTICLE 8.	
Profane swearing.	Officer: Public reprimand. Enlisted man: Solitary confinement for thirty days.
Falsehood.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Drunkenness on duty.	Officer: Dismissal and imprisonment for one year. Enlisted man: Confinement for one year and dishonorable discharge.
Drunkenness.	Officer: Dismissal. Enlisted man: Confinement for six months.
Gambling.	Officer: Dismissal. Enlisted man: Confinement for six months.
Fraud.	Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.
Theft: 1. Above one hundred dollars. 2. Between fifty and one hundred dollars. 3. Under fifty dollars.	1. Officer: Dismissal and imprisonment for four years. Enlisted man: Confinement for four years and dishonorable discharge. 2. Officer: Dismissal and imprisonment for three years. Enlisted man: Confinement for three years and dishonorable discharge. 3. Officer: Dismissal and imprisonment for two years. Enlisted man: Confinement for two years and dishonorable discharge.

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Offenses.	Limit of punishment.
UNDER ARTICLE 8—Continued.	
Scandalous conduct tending to the destruction of good morals.	Officer: Dismissal and imprisonment at hard labor for fifteen years. Enlisted man: Confinement for fifteen years and dishonorable discharge.
Cruelty toward, or oppression or maltreatment of, any person subject to his orders.	Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.
Quarreling with, striking or assaulting, or using provoking or reproachful words, gestures, or menaces toward any person in the Navy.	Officer: To lose five numbers. Enlisted man: Confinement for three months.
Endeavoring to foment quarrels between other persons in the Navy.	Officer: To lose five numbers. Enlisted man: Confinement for three months.
Sending or accepting a challenge to fight a duel or acting as second in a duel.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Treating his superior officer with contempt or being disrespectful to him in language or deportment while in the execution of his office.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
To join in or abet any combination to weaken lawful authority of, or lessen the respect due to, his commanding officer.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Uttering seditious or mutinous words.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Negligent or careless in obeying orders.	Officer: To lose ten numbers. Enlisted man: Confinement for six months.
Culpably inefficient in the performance of duty.	Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.
Not using his best exertions to prevent the unlawful destruction of public property by others.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Through inattention or negligence suffering a vessel of the Navy to be stranded, or run upon a rock or shoal, or hazarded.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
When attached to any vessel appointed as convoy to any merchant or other vessel, fails diligently to perform his duty, or demands or exacts any compensation for his services, or maltreats the officers or crew of such merchant or other vessel.	Officer: Dismissal.
Taking, receiving, or permitting to be received on board the vessel to which he is attached any goods, merchandise, for freight, sale, or traffic, except gold, silver, or jewels for freight or safekeeping, or demanding or receiving any compensation for the receipt or transportation of any other article than gold, silver, or jewels without authority from the President or the Secretary of the Navy.	Officer: Dismissal.
Knowingly making, signing, or aiding, abetting, directing, or procuring the making or signing of any false muster.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Wasting any ammunition, provisions, or other public property, or, having power to prevent it, knowingly permits such waste.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
When on shore, plundering, abusing, or maltreating any inhabitant or injuring his property by means of—	
1. Manslaughter.	1. Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
2. Assault with intent to kill	2. Officer: Dismissal and imprisonment at hard labor for five years. Enlisted man: Imprisonment at hard labor for five years and dishonorable discharge.
3. Assault and battery.	3. Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.

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Offenses.	Limit of punishment.
UNDER ARTICLE 8—Continued.	
When on shore, plundering, abusing, or maltreating any inhabitant or injuring his property by means of—	
4. Rape.	4. Officer: Dismissal and imprisonment at hard labor for twenty years. Enlisted man: Imprisonment for twenty years at hard labor and dishonorable discharge.
5. Burglary.	5. Officer: Dismissal and imprisonment at hard labor for seven years. Enlisted man: Imprisonment at hard labor for seven years and dishonorable discharge.
6. Robbery.	6. Officer: Dismissal and imprisonment at hard labor for seven years. Enlisted man: Imprisonment at hard labor for seven years and dishonorable discharge.
7. Arson.	7. Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
8. Obscene and abusive language.	8. Officer: Public reprimand. Enlisted man: Confinement for three months.
9. Wilful destruction of property.	9. Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Refusing or failing to use his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
When rated or acting as master-at-arms refuses to receive such prisoners as may be committed to his charge, or having received them, suffers them to escape or dismisses them without orders from the proper authority.	Enlisted man: Confinement at hard labor for five years and dishonorable discharge.
Absent from station and duty without leave, or after his leave has expired.	Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.
Violating or refusing obedience to any lawful general order or regulation issued by the Secretary of the Navy.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.
Desertion (in case of surrender to naval authorities).	Officer: Dismissal. Enlisted man: Confinement for eighteen months and dishonorable discharge.
Desertion (in case of apprehension or delivery to naval authorities): 1. If less than six months in the service.	Officer: Dismissal and imprisonment for four years. Enlisted man: 1. Confinement for eighteen months and dishonorable discharge.
2. If more than six months in the service.	2. Confinement for two and one-half years and dishonorable discharge.
Desertion: From a ship about to sail on an extended cruise.	Officer: Dismissal and imprisonment for three years. Enlisted man: Confinement for three years and dishonorable discharge.
When joined in by two or more men in the execution of a conspiracy, or for desertion in the presence of any unlawful assemblage which the naval forces may be opposing.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Aiding or enticing others to desert.	Officer: Dismissal and imprisonment for four years. Enlisted man: Confinement for one year and dishonorable discharge.
Receiving or entertaining any deserter from any other vessel of the Navy, knowing him to be such, and not with all convenient speed giving notice of such deserter to the commander of the vessel to which he belongs or to the commander-in-chief or to the commander of the squadron.	Officer: Dismissal.
UNDER ARTICLE 9.	
Absent from command without leave.	Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge.
UNDER ARTICLE 11.	
Procuring stores or other articles or supplies for and disposing thereof to officers and enlisted men on vessels of the Navy, or at any yard or naval station, for his own account or benefit.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.

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Offenses.	Limit of punishment.
UNDER ARTICLE 14.	
Presenting or causing to be presented to any person in the civil, military, or naval service for approval or payment any claim against the United States, or any officer thereof, knowing said claim to be false or fraudulent.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Entering into any agreement or conspiracy to defraud the United States by obtaining or aiding others to obtain the allowance of any false or fraudulent claim.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Making or using, or procuring or advising the making or using, of any writing or other paper, knowing the same to contain any false or fraudulent statement, for the purpose of obtaining or aiding others to obtain the approval, allowance, or payment of any claim against the United States or against any officer thereof.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Making or procuring or advising the making of any oath to any fact or to any writing or other paper, knowing such oath to be false, for the purpose of obtaining or aiding others to obtain the approval, allowance, or payment of any claim against the United States or any officer thereof.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Forging or counterfeiting, or procuring or advising the forging or counterfeiting, of any signature upon any writing or other paper, or using or procuring, or advising the using of any such signature, knowing it to be forged or counterfeited, for the purpose of obtaining or aiding others to obtain the approval, allowance, or payment of any claim against the United States or any officer thereof.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Knowingly delivering or causing to be delivered to any person having authority to receive the same any amount of money or other public property of the United States furnished or intended for the naval service less than that for which he receives a certificate or receipt.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Knowingly making or delivering to any person a paper certifying the receipt of any money or other property of the United States furnished or intended for the naval service thereof without having full knowledge of the truth of the statement therein contained and with intent to defraud the United States.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Stealing, embezzling, knowingly and willfully misappropriating and applying to his own use and benefit, or unlawfully selling or disposing of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military or naval service thereof.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Knowingly purchasing or receiving in pledge, for any obligation or indebtedness from any other person who is a part of or employed in the naval service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such other person not having lawful right to sell or pledge the same.	Officer: Dismissal and imprisonment for two years. Enlisted man: Confinement for two years and dishonorable discharge.
Executing, attempting, or countenancing any fraud against the United States.	Officer: Dismissal and imprisonment for two years. Enlisted man: Confinement for two years and dishonorable discharge.
UNDER ARTICLE 19.	
Knowingly enlisting into the naval service any person who has deserted in time of war from the naval or military service of the United States, or any insane or intoxicated person, or minor between the ages of 14 and 18 without the consent of his parents or guardian, or any minor under the age of 14.	Officer: Dismissal.
UNDER ARTICLE 22.	
Manslaughter.	Officer: Dismissal and imprisonment at hard labor for ten years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.

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Offenses.	Limit of punishment.
UNDER ARTICLE 22—Continued.	
Assault with deadly weapon and wounding.	Officer: Dismissal and imprisonment for five years. Enlisted man: Imprisonment at hard labor for five years and dishonorable discharge.
Rape.	Officer: Dismissal and imprisonment at hard labor for twenty years. Enlisted man: Imprisonment at hard labor for twenty years and dishonorable discharge.
Robbery.	Officer: Dismissal and imprisonment at hard labor for seven years. Enlisted man: Imprisonment at hard labor for seven years and dishonorable discharge.
Sodomy	Officer: Dismissal and imprisonment at hard labor for fifteen years. Enlisted man: Imprisonment at hard labor for ten years and dishonorable discharge.
Lewd or indecent behavior.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Smuggling liquor.	Officer: Loss of three numbers and public reprimand. Enlisted man: Confinement for six months and dishonorable discharge.
Attempting to suborn testimony to be given before court-martial.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for three years and dishonorable discharge.
Neglecting to discharge pecuniary obligations (aggravated case).	Officer: Dismissal. Enlisted man: Confinement for six months.
False swearing or perjury.	Officer: Dismissal and imprisonment for five years. Enlisted man: Confinement for five years and dishonorable discharge.
Disorderly conduct (aggravated case): 1. Assaulting and striking another person in the Navy. 2. Attempting to strike and assault another person in the Navy. 3. Disrespector affront to sentinel. 4. Interfering with or resisting sentinel in lawful execution of his duty.	1. Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge. 2. Officer: Dismissal. Enlisted man: Confinement for six months and dishonorable discharge. 3. Officer: To lose five numbers. Enlisted man: Confinement for three months. 4. Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Striking or assaulting a sentinel.	Officer: Dismissal and imprisonment for two years. Enlisted man: Confinement for two years and dishonorable discharge.
Refusing obedience to lawful orders of sentinel.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Neglect of duty.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Resisting arrest.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Enticing a prisoner to escape.	Officer: Dismissal and imprisonment for one year. Enlisted man: Confinement for two years and dishonorable discharge.
Malingering.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Refusing to give testimony before a court-martial.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Behaving contumaciously before a board or court.	Officer: Loss of ten numbers. Enlisted man: Confinement for six months.
Using profane, abusive, and threatening language toward his superior officer.	Officer: Dismissal. Enlisted man: Confinement for two years and dishonorable discharge.

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Offenses.	Limit of punishment.
UNDER ARTICLE 22—Continued.	
Mayhem.	Officer: Dismissal and imprisonment for three years. Enlisted man: Imprisonment for three years at hard labor and dishonorable discharge.
Malicious or willful destruction of public property.	Officer: Dismissal and imprisonment for two years. Enlisted man: Imprisonment for two years at hard labor and dishonorable discharge.
Attempting to desert.	Enlisted man: Confinement for six months.
Answering for another at muster.	Enlisted man: Confinement for six months.
Breaking arrest.	Officer: Dismissal. Enlisted man: Confinement for five years and dishonorable discharge.
Conduct unbecoming an officer and a gentleman.	Officer: Dismissal.
Conduct to the prejudice of good order and discipline.	Officer: Dismissal and imprisonment at hard labor for fifteen years. Enlisted man: Confinement for fifteen years and dishonorable discharge.
Fraudulent enlistment.	Enlisted man: Confinement for one year and dishonorable discharge.
Creating a disturbance after being placed in arrest.	Enlisted man: Confinement for six months.
Liquor unlawfully in possession on board ship, in a navy yard, naval station, or garrison, or upon returning to the same (aggravated case).	Officer: Loss of three numbers and public reprimand. Enlisted man: Confinement for six months and dishonorable discharge.
Refusing to halt when challenged by noncommissioned officer of guard or sentinel.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.
Using profane, obscene, or abusive language toward another person in the service.	Officer: Dismissal. Enlisted man: Confinement for one year and dishonorable discharge.

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X.

NAVAL ACADEMY COURT-MARTIAL.

(Act of June 23, 1874; 18 Stat., 203.)
(Act of March 2, 1895; 28 Stat., 838.)
(Act of March 3, 1903; 32 Stat., 1198.)
(Act of April 9, 1906; 34 Stat., 104–105.)

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NAVAL ACADEMY COURT-MARTIAL.

391. When and how convened.—The Superintendent of the Naval Academy may, in his discretion and with the approval of the Secretary of the Navy, cause any midshipman in the said academy to be tried by "court-martial" for the offense of hazing. (34 Stat., 104.)

392. Constitution of.—Such "court-martial" shall be composed of "not less than three commissioned officers" (18 Stat., 203) as members, and a commissioned officer shall be appointed to act as judge advocate.

393. Sentence which may be imposed by such court.—Such "court-martial" has discretion as to the sentence to be imposed upon conviction of hazing. It may, upon such conviction, sentence a midshipman to any punishment authorized for any violation or breach of the rules of the Naval Academy, or to dismissal in any case, and, in addition to dismissal, to imprisonment for a period not exceeding one year in cases of "brutal or cruel" hazing. (34 Stat., 104–105.)

394. Finding and sentence subject to review.—Such "court-martial's" findings and sentence are subject to review by the convening authority and the Secretary of the Navy. (34 Stat., 105.) In cases where suspension or dismissal is adjudged it is advisable that the sentence be submitted to the President for confirmation. (See file 26283–925.)

395. Jurisdiction of Naval Academy court-martial restricted to the offense of hazing.—The statutes authorizing the convening of Naval Academy courts-martial do not extend the jurisdiction of such "courts-martial" beyond the offense of hazing.

396. "Hazing" defined by statute.—The offense of "hazing" shall consist of "any unauthorized assumption of authority by one midshipman over another midshipman whereby the last-mentioned midshipman shall or may suffer or be exposed to suffer any cruelty, indignity, humiliation, hardship, or oppression, or the deprivation or abridgment of any right, privilege, or advantage to which he shall be legally entitled." (34 Stat., 105.)

397. Trial by court-martial not mandatory in cases of hazing.—The Superintendent of the Naval Academy may, at his discretion, deal with the offense of hazing by usual disciplinary measures without the

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intervention of a "court-martial." But such measures do not permit of the dismissal of any midshipman except upon written charges by the superintendent, an opportunity for written reply by the accused, a finding by a "board of inquiry" as to the issues of fact, and a decision by the Secretary of the Navy to dismiss the accused, which decision must have the "written approval of the President." (34 Stat., 104; a "board of inquiry" as used herein has been held to mean a "court of inquiry." File 26101–2, Sec. Navy, Aug. 14, 1909.)

398. Dismissal for a single act of hazing requires trial by court-martial.—Proceedings for dismissal without trial by "court-martial" can not be had for a "single act of hazing." (34 Stat., 104.) The accused in such case must either be tried by "court-martial" or punished otherwise than by dismissal. (For what constitutes a "single act of hazing" see C. M. O. 31, 1915, 11.)

399. "Court-martial" follows the procedure of a general court-martial.—A Naval Academy "court-martial" follows the procedure of a general court-martial. (See Ch. IX.)

400. Midshipmen may be tried by general court-martial.—Midshipmen are triable by general court-martial, convened by proper authority in accordance with the limitations and conditions applying to other trials by general court-martial, and provided that sentences of suspension and dismissal must be confirmed by the President before being carried into execution. (28 Stat., 838.)

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XI.

SUMMARY COURTS-MARTIAL.

(A. G. N. 26–34 and subsequent statutory enactments quoted thereunder.)

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SUMMARY COURTS-MARTIAL.

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PLACE AND TIME OF MEETING.

401. Place and time of meeting.—See sections 215–217 under general courts-martial, which in general apply to summary courts-martial. Hours for holding sessions of a summary court-martial, however, shall be selected with a view to as little interference with the performance of routine duties as the administration of justice and the interests of the accused and the service permit.

CONVENING AUTHORITY.

402. Who may order summary court—Upon whom—For what offenses.—See Article 26, A. G. N., and act of August 29, 1916, quoted thereunder.

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403. "Commander of any vessel" construed.—The words "commander of any vessel," as used in Article 26, A. G. N., have been construed to include a warrant officer when he is actually commanding a naval vessel, and this notwithstanding the fact that a warrant officer (non-commissioned) is not competent to serve as a member of a court-martial. (C. M. O. 6, 1915, 5.)

CONSTITUTION.

404. Composition of.—See Article 27, A. G. N. The provisions of this article admit of a commissioned warrant officer being ordered as a member of a summary court-martial. (See also section 224, and General Order 296.)

405. For trial of a marine.—When a marine is to be tried by summary court-martial, one or more marine officers shall, if practicable, be detailed as members of the court.

406. Personnel of court.—It is desirable that care be exercised in selecting the personnel of a court, so that no reasonable objection against a member may be made by either the accused or the recorder when called upon to exercise the right of challenge.

407. Deficiency of members—How supplied.—When a trial by summary court-martial is decided upon, and a sufficient number of officers of the proper rank to compose the court are not under the command of the convening authority, the latter shall request the senior officer present to detail the additional officers necessary. The senior officer present shall, if practicable, comply with such request, in which case he shall, orally or in writing, notify the officers detailed. (In this connection see Navy Regulations, 1913, R-3910 (3).)

408. Changes in court.—The provisions of section 225 in regard to changes in the composition of a general court-martial apply also to a summary court-martial, but ordinarily, where changes are necessitated in the composition of a summary court-martial, a new precept should be issued.

PRECEPT.

409. Precept.—The precept for a summary court-martial shall specify the personnel of the court and the time and place of meeting. The convening authority shall deliver the precept to the senior member and, orally or in writing, notify the other members and the recorder of their appointment. The precept, and orders altering the same, if any (see sec. 408), must be read by the recorder in court in the presence of the accused. The original precept shall be prefixed to the record of the first case tried thereunder, and if more than one case be tried thereunder, shall be referred to in the record of each case subsequent to the first.

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THE SPECIFICATIONS.

(*See* Chapter VI.)

410. Accused to be furnished copy of specification(s) before trial.—As soon as practicable after it has been decided to bring him to trial, the accused shall be furnished with a copy of the specification(s) preferred against him. After he has received this copy he shall, before he is brought to trial, be allowed a reasonable time to prepare his defense, but he may be tried at any time after he announces in open court that he is ready for trial. The record must show, by admission of the accused or by other proof, that, at a stated time prior to the trial, he received a copy of the specification(s) preferred against him.

411. Form of specification.—A separate specification shall be used for each distinct offense, and two or more such specifications may be joined for a single trial. The specimen forms for specifications set forth in Chapter VI shall be followed in the preparation of specifications for summary courts-martial, except that the specification shall not be laid under any particular charge, and the caption shall read: "Specification of an offense preferred against A——— B. C———, seaman, U. S. Navy," or, if there is more than one specification, "Specifications of offenses," etc. In the latter case the several specifications shall be paragraphed and consecutively numbered, as in the case of several specifications for trial by general courts-martial.

412. Offenses triable by summary court-martial.—Article 26, A. G. N., makes triable by summary court-martial offenses committed by enlisted men which an officer empowered to order a summary court-martial "may deem deserving of greater punishment" than those prescribed in Article 24, A. G. N., "but not sufficient to require trial by general court-martial." So, when the nature of an offense charged is of such character that the punishment which a summary court-martial is authorized to inflict is not adequate (see art. 30, A. G. N.), the offender should be brought to trial before a general court-martial, unless it is impracticable to do so. In this connection it is to be noted that the offense of "fraudulent enlistment, and the receipt of any pay or allowance thereunder," was, by statute, declared an offense against naval discipline and made punishable by *general* court-martial (27 Stat., 716). Jurisdiction over this offense, therefore, is expressly limited to a general court-martial.

413. Specification(s) to be prefixed to record.—The original specification(s) shall be prefixed to the record in each case.

414. Must be pronounced in due form and technically correct.—See section 235 under general courts-martial, which applies equally to summary courts-martial.

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MEMBERS.

415. In general.—Except where conflicting with the following section and where peculiar to a general court-martial, the provisions in regard to "Members" as laid down under general courts-martial, sections 236–247, apply equally to summary courts-martial.

416. Not exempt from other duties.—Summary court-martial duty shall be performed in addition to other duties, unless the convening authority directs otherwise.

SENIOR MEMBER.

417. Duties in general.—The senior member of a summary court-martial corresponds to the president of a general court-martial, and the general duties of the latter, as laid down in sections 248–249, under general courts-martial, apply to the senior member of a summary court-martial.

When a summary court-martial meets and when it adjourns, the senior member shall cause the same to be reported, through routine channels, to the convening authority.

RECORDER.

418. Who may act as such.—The convening authority "may order any officer under his command to act as recorder of a summary court-martial." (27 A. G. N.)

419. Responsible to convening authority.—An officer so detailed shall be responsible to the convening authority for the proper performance of his duties in the same manner as he is responsible for the performance of other military duties.

420. Not subject to challenge.—The recorder is not subject to challenge on any grounds.

421. General duties.—The recorder corresponds to the judge advocate of a general court-martial, and the general duties of the latter, as laid down in sections 253–258, apply to the recorder of a summary court-martial.

422. Summoning witnesses.—The recorder shall summon all witnesses both for the prosecution and the defense. The provisions of sections 122 to 132 are applicable to the recorder of a summary court-martial, as well as to the judge advocate of a general court-martial, except that the statutory authority to compel the attendance of civilian witnesses within the jurisdiction therein specified is not construed as extending to summary courts-martial. The attendance of a civilian witness before a summary court-martial is, therefore, optional, and the subpœna for same should not include mention of a

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penalty for failure. (See p. 374.) Such witness can be subpœnaed by the recorder at Government expense only with the approval of the convening authority, and the approval of the Secretary of the Navy is necessary to subpœna such witness from a distance which would require such authority if the attendance of the witness were desired before a general court-martial.

ACCUSED.

423. To be present in open court.—See sections 263–264 under general courts-martial, which are applicable to the accused in a trial by summary court-martial.

COUNSEL FOR THE ACCUSED.

424. As a rule, the accused should secure counsel of choice. But when an accused desiring counsel is not otherwise provided, application should be made to the convening authority who should detail a suitable officer to act as such counsel. The general provisions in regard to counsel for the accused laid down under general courts-martial, sections 265–268, apply also to summary courts-martial.

CLERK, STENOGRAPHER, AND INTERPRETER.

425. While the services of a clerk, stenographer, or interpreter are not ordinarily required before a summary court-martial, in cases where such services may be utilized the provisions of sections 269–273, under general court-martial, apply.

ORDERLY.

426. At the request of the senior member of the court, the convening authority shall direct an orderly to be detailed to attend the meetings of the court and execute its orders.

CHALLENGE.

427. The provisions of sections 277–282, under general courts-martial, apply equally to the right of challenge in summary court-martial cases.

OATHS.

428. After the accused has announced that he does not object to any member of the court each member and the recorder shall be

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sworn. The recorder shall first administer the following oath to the members:

Oath for members.—"You, A. B., C. D., E. F., do swear (*or* affirm) that you will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and your own conscience." (A. G. N. 28.)

429. The senior member shall then administer the following oath to the recorder:

Oath for recorder.—"You, A. B., do swear (*or* affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof." (A. G. N. 28.)

430. Each witness before a summary court-martial must, prior to giving his testimony, be sworn, or affirmed, by the senior member, as follows:

Oath for witnesses.—"You do solemnly swear (*or* affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, this you do under the pains and penalties of perjury)." (A. G. N. 41.)

431. In General.—For oath for clerk, stenographer, interpreter, when their services are required before a summary court-martial, oath on a voir dire, and general remarks which are applicable here, see sections 287–290.

POSTPONEMENT.

432. Proceedings in a case may be suspended for cause, in which event a new case or other business before the court may be taken up. After its first meeting, a summary court-martial shall meet at the time specified at adjournment, or, if no time was specified, at the call of the senior member, unless, in either case, the convening authority directs otherwise.

ARRAIGNMENT.

433. After the court has been organized (sworn), and both parties are ready to proceed, the recorder will read each specification separately, and in order, to the accused and ask him how he pleads to each, "guilty" or "not guilty."

434. Trials in joinder.—See section 293, which applies to trials by summary as well as general court-martial.

PRELIMINARY MOTIONS.

435. See remarks under general courts-martial, secs. 294 to 300, which apply to summary courts-martial.

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PLEAS.

436. See remarks under general courts-martial, secs. 301 to 310, which apply to summary courts-martial.

WITNESSES.

437. See sections 122–177; see also, in connection therewith, section 422, and note, as to case of contempt, on p. 394.

STATEMENT AND ARGUMENTS.

438. See remarks under general courts-martial, secs. 311 to 317, which apply to summary courts-martial.

FINDINGS.

439. Inasmuch as the specification for a trial by summary court-martial is not laid under any charge, so much of the provisions of sections 318–325, under general courts-martial, as refer to findings upon the charge are not applicable to summary court-martial trials; but when such court finds a specification not proved, it should acquit the accused of the offense specified. With this exception the provisions of the above sections apply to the findings of a summary court-martial. See also in this connection section 452.

RECORD OF PREVIOUS CONVICTIONS.

440. Sections 326 to 334, setting forth when and how the record of previous convictions is to be introduced before a general court-martial, apply also to a summary court-martial.

THE SENTENCE.

441. Authorized punishments.—Summary courts-martial are restricted in their sentences to the punishments specifically authorized in article 30, A. G. N., as affected by the act of February 16, 1909, section 8, quoted thereunder. The effect of the provision of said act authorizing a court to "adjudge either a part or the whole, as may be appropriate, of any one of the punishments" enumerated in article 30, is construed as permitting of the imposition of a sentence, under article 30, involving either extra police duties or loss of pay alone. But care must be taken not to include parts of two or more punishments in a sentence. Thus, sentences involving confinement on bread and water or on diminished rations are illegal unless it is expressly provided that such confinement is to be "solitary," although solitary confinement may be adjudged by itself without diminished rations. Also, sentences must be expressed in the terms used in article 30. Thus, a sentence to "extra duties" instead of "extra police duties"

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is illegal. In adjudging adequate punishment within the limits of their statutory authority, courts should be guided by the schedule of punishments published by the department for the purpose of securing uniformity in punishment. (See General Order No. 110 (revised).)

442. Loss of pay.—Loss of pay should be expressed in dollars and cents—not days' pay—and should be based upon the actual pay, not including extras for mess cook, gun pointer, acting coxswain, etc. When a sentence of loss of pay is coupled with that of reduction in rating, care shall be taken to insure the fact that the loss of pay adjudged is based on the pay of the rating to which the accused has been reduced and not on his original rating.

443. Extra police duties.—Except where the offender is serving on a receiving ship or at a shore station, sentences involving extra police duties are, as a general rule, undesirable, but this will not be construed as prohibiting the imposition of this sentence on board ships on which circumstances render it desirable.

444. Phraseology to be employed in sentences involving confinement.—Where the legal term of confinement is limited to "30 days," the exact phraseology should be employed in adjudging a sentence involving confinement for such maximum period. A sentence of "solitary confinement for one month," for example, would be irregular and improper, as the article quoted above prescribes 30 days as the maximum, whereas one month might be in excess of the limit so fixed.

445. Meaning of "confinement."—The word "confinement," within the meaning of Article 30, A. G. N., imports more than restriction to a ship or station. The punishment of "confinement not exceeding two months," authorized by said article, is intended to be a different punishment from mere deprivation of liberty which a commanding officer is authorized to inflict. (C. M. O. 2, 1912, 11.) An enlisted man in confinement should therefore be kept separate from the remainder of the crew, but the convening authority may, at his discretion, extend the limits of confinement during working hours or at other times that he may deem expedient.

446. Bread and water.—See section 353, under general courts-martial, which applies to summary courts-martial.

447. Deprivation of liberty.—A sentence of "deprivation of liberty" is illegal, unless the words "on shore on foreign station" are added, and the court, in adjudging such sentence, shall not exceed the limit of three months.

448. Disrating for incompetency.—Article 31, A. G. N., gives a summary court-martial authority to disrate for incompetency. (See, in this connection, sec. 81.) In the case of a person found guilty of incompetency, the sentence of disrating is mandatory, and it is the only authorized punishment therefor.

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449. Classification for disrating.—In order to insure uniformity in the reduction in rating of enlisted men by sentence of summary courts-martial, the following classification of the petty officers and other enlisted men in the Navy, and of the noncommissioned officers, musicians, and privates in the Marine Corps, arranged in each case to show their "next inferior rating" shall be followed, unless the man's current enlistment record shows that he was promoted to his present rate from some inferior rating other than the one indicated by the table, in which case his reduction shall be to the inferior rating from which he was last advanced, and it shall be so stated in the record of the court.

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CLASSIFICATION FOR DISRATING.

Seaman branch.

Class.	Rating.						
Chief petty officers	Chief master-at-arms	Chief boatswain's mate	Chief gunner's mate	Chief turret captain	Chief quartermaster		
Petty officers, first class.	Master-at-arms, first class.	Boatswain's mate, first class.	Gunner's mate, first class.	Turret captain, first class.	Quartermaster, first class.		
Petty officers, second class.	Master-at-arms, second class.	Boatswain's mate, second class.	Gunner's mate, second class.		Quartermaster, second class.		
Petty officers, third class.	Master-at-arms, third class.	Coxswain	Gunner's mate, third class.		Quartermaster, third class.		
Seaman, first class	Seaman gunner[1]	Seaman gunner[1]	Seaman gunner[1]	Seaman gunner[1]	Seaman gunner[1]		
Seaman, second class	Seaman, second class	Seaman, second class	Seaman, second class	Seaman, second class	Seaman, second class		
Seaman, third class	Apprentice seaman	Apprentice seaman	Apprentice seaman	Apprentice seaman	Apprentice seaman		

[1] When holding a certificate as such, otherwise seaman.

Artificer branch.—(*Table I.*)

Class.	Rating.									
Chief petty officers	Chief electrician	Chief carpenter's mate					Chief printer		Chief storekeeper.	
Petty officers, first class.	Electrician, first class.	Carpenter's mate, first class.	Shipfitter, first class.	Blacksmith (deck force).	Plumber and fitter.	Sailmaker's mate.	Printer, first class.	Painter, first class.	Storekeeper, first class.	
Petty officers, second class.	Electrician, second class.	Carpenter's mate, second class.	Shipfitter, second class.				Printer	Painter, second class.	Storekeeper, second class.	
Petty officers, third class	Electrician, third class.	Carpenter's mate, third class.						Painter, third class.	Storekeeper, third class.	
Seaman, first class										
Seaman, second class		Shipwright								
Seaman, third class	Landsman	Landsman	Landsman	Landsman	Landsman	Landsman	Landsman	Landsman	Landsman.	

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Artificer branch.—(Table II.)

Class.	Rating.						
Chief petty officers	Chief machinist's mate	Chief water tender					
Petty officers, first class	Machinist's mate, first class	Water tender	Boilermaker	Coppersmith	Blacksmith (engineer's force).		
Petty officers, second class	Machinist's mate, second class; oiler						
Seamen, first class		Fireman, first class					
Seamen, second class		Fireman, second class					
Seamen, third class	Fireman, third class	Fireman, third class	Fireman, third class	Fireman, third class.	Fireman, third class		

Special branch.

Chief petty officers	Chief yeoman	Chief pharmacist's mates	Bandmaster		Chief commissary steward		
Petty officers, first class	Yeoman, first class	Pharmacist's mates, first class	First musician		Commissary steward; ship's cook, first class; baker, first class.		
Petty officers, second class	Yeoman, second class	Pharmacist's mates, second class			Ship's cook, second class		
Petty officers, third class	Yeoman, third class	Pharmacist's mates, third class					
Seamen, first class		Hospital apprentices, first class	Musician, first class		Ship's cook, third class; baker, second class.		
Seamen, second class		Hospital apprentices, second class.	Musician, second class.	Bugler	Ship's cook, fourth class		
Seamen, third class	Landsman	Landsman	Landsman	Landsman	Landsman		

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MESSMEN BRANCH.

RATING.
Steward or cook.
Mess attendant, first class.
Mess attendant, second class.
Mess attendant, third class.

MARINES.

CLASS.	RANK.						
Chief petty officers.	Sergeant major.	Quartermaster sergeant; quartermaster sergeant (Pay Department).	Leader of band. / Second leader of band.	First sergeant; gunnery sergeant.	Drum major.		
Petty officers, second class.	Sergeant.						Principal musician.
Petty officers, third class.	Corporal.						
Seamen, first class.	Private.					Drummer; trumpeter.	Musician, first class.
Seamen, second class.							Musician, second class.
Seamen, third class.							Musician, third class.

450. Method of arriving at sentence.—See section 336, under general courts-martial, which applies to a summary court-martial.

451. Recordation and authentication of sentence.—See sections 354–356, under general courts-martial, which apply to a summary court-martial.

452. Vote or opinion of individual members of court not to be disclosed.—In the matter of secrecy, members of summary courts-martial are governed by the same principle which applies to members of general courts-martial. The latter are sworn not to "divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority," and not at any time to "divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law." (A. G. N. 40.) While the oath administered to members of a summary court-martial contains no such provision,

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yet the same reason exists for requiring the members of a summary court-martial to maintain silence as to the sentence of the court prior to its approval and the vote or opinion of any particular member of the court, as exists for such requirement on the part of members of a general court-martial. Therefore, subject to the exception in regard to judicial proceedings noted in the statute prescribing the oath for members of general courts-martial, the vote or opinion of each member of a summary court-martial, either as to the sentence of the court or as to any other matter, should not be disclosed.

Recommendation to Clemency.

453. See section 357, under general courts-martial, which applies to a summary court-martial.

Record of Proceedings.

454. See chapter VII and sections 358–365, which, except where peculiar to general courts-martial, apply to the record of a summary court-martial; see also sections 463–464.

455. Conduct of proceedings and final disposition of record.—See article 34, A. G. N.

Revision.

456. In general.—The remarks under general courts-martial, sections 372 to 381, except where peculiar to general courts-martial, apply equally to summary courts-martial.

457. Revision by a different court.—The only case in which a revision may be had by a summary court-martial other than the one which sat originally is where the medical officer certifies that the execution of the original sentence would be seriously injurious to the health of the accused. (See A. G. N., 33.) In such a case the new court is restricted in its action to the review of the record of the former trial, and a redetermination of the sentence. No further testimony shall be admitted.

Reviewing Authority.

458. In general.—See sections 383 to 386 under general courts-martial, which apply also to summary courts-martial.

459. Execution of sentence.—Article 32, A. G. N., as affected by the act of February 16, 1909, section 17, and the act of August 29, 1916, quoted thereunder, provides for the execution of a summary court martial sentence upon the approval of the "immediate superior in command" of the convening authority, except that where the convening authority is senior officer present his own approval is suffi-

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cient. (For construction of "immediate superior in command" see C. M. O. 30, 1916, 7–8.) Upon the approval, therefore, of the convening authority, and, except where the convening authority is senior officer present, upon the further approval of the "immediate superior in command," any authorized sentence of a summary court martial, except a bad conduct discharge in certain cases as noted hereinafter, may be carried into execution immediately. But enlisted men of both the Navy and Marine Corps, who are not in their first enlistments, shall not be discharged from the service with a bad conduct discharge, in accordance with the sentence of a summary court martial, until an order for discharge is received from the Bureau of Navigation or the Commandant of the Marine Corps. Enlisted men of both the Navy and Marine Corps, however, who are in their first enlistments, may be so discharged without the above-mentioned order, within the continental limits of the United States, and men in the insular force sentenced by summary court martial to discharge with a bad-conduct discharge may be so discharged in the Philippine Islands, Samoa, or Guam, according to the place of enlistment. Men under sentence of discharge with bad-conduct discharge, and on board of a vessel about to proceed to a port outside of the United States, may, upon order of a senior officer present, be transferred to the nearest receiving ship or marine barracks, according to the circumstances, or to a ship remaining in port; provided that no expense for travel be incurred by such transfer, and that the Bureau of Navigation or the Commandant of the Marine Corps, as the case may require, be informed thereof.

460. In case of acquittal or disapproval of the sentence.—In cases where the accused has been acquitted by the court, or where the sentence has been disapproved by the convening authority, the record of proceedings shall be submitted to the immediate superior in command in the same manner as though a sentence requiring action still remained.

461. Power to remit.—See article 30, A. G. N., and act of February 16, 1909, section 9, quoted thereunder. All powers of mitigation vested in the convening authority may be exercised by other reviewing authority.

462. Exercise of mitigating power.—In connection with the exercise of the power to mitigate it is to be noted that so much of a sentence as requires confinement to be solitary or on diminished rations may be remitted; or, in sentences involving bread and water, the frequency of full rations may be increased. In sentences involving a bad conduct discharge together with a loss of pay, the latter should, whenever necessary, be remitted to such an extent as to leave the discharged man sufficient money for his immediate needs after his separation from the service.

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463. Synopsis of conduct spread upon record when bad conduct discharge is adjudged.—In every case where a sentence involving a bad conduct discharge has been imposed, it shall be the duty of the officer ordering the court, before acting upon the proceedings, to spread upon the record a brief synopsis of the service of the person tried and the offenses committed by him during his current enlistment.

464. Order to the pay officer.—Records of the proceedings of summary courts-martial and deck courts shall show, over the signature of the pay officer having the accounts of the accused, that the loss of pay, if there be any adjudged and approved, has been checked. In order to enable the pay officer to make the necessary certificate, the commanding officer shall forward with the record the requisite order for the checkage; such order shall be in duplicate; one copy shall be sent immediately by the commanding officer *direct to the Auditor for the Navy Department.* The order shall contain the following information: Name, rate (rank), date of trial, offense (briefly stated), and sentence as finally approved. If the offense is absence over leave or absence without leave, the dates of the beginning and ending of the unauthorized absence should be stated. In the case of a marine, certificate shall be made by the commanding officer of the marine that the checkage has been entered in the service record book, or on the pay roll, as the case may be.

465. Transcript from record.—Before a summary court-martial record is transmitted to the Judge Advocate General (A. G. N. 34), a brief transcript shall be taken therefrom (except in case of acquittal) and furnished to the officer of the deck and the executive officer for entry, respectively, in the ship's log and upon the service record of the man concerned. In the case of a marine the transcript shall be furnished to the marine's commanding officer. This transcript shall comprise—

(1) The date of offense.

(2) The nature of the offense.

(3) Punishment adjudged as approved by the convening and the reviewing authority.

(4) Date of such approval.

If the said punishment be disapproved or mitigated subsequently by the department, an entry to that effect shall be made as soon as notice thereof is received. If bad conduct discharge (of a man not in first enlistment) be included in the sentence, the final action in each case shall be similarly entered. The transcript and entries shall be authenticated by the signature of the commanding officer.

DISSOLUTION.

466. The court is dissolved by order of the convening authority. This order may be oral.

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XII.

DECK COURTS.

(Act of February 16, 1909; 35 Stat., 621, quoted on pp. 45–46.)

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DECK COURTS.

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CONVENING AUTHORITY.

467. Who may order deck court—Upon whom—And for what offenses.—See act of February 16, 1909, section 1, as affected by that part of the act of August 29, 1916, which is quoted thereunder on page 45.

CONSTITUTION.

468. Constitution of court.—See act of February 16, 1909, section 2, quoted on page 45. See also General Order 296. The order constituting the court shall be in writing, except as noted in the following section.

469. Who may act as deck court officer.—Officers shall not be ordered as deck court officers who are below the rank of lieutenant in the Navy or captain in the Marine Corps, except that, in cases where there is no officer of such rank, or of higher rank, attached to the vessel, navy yard, station, or command, the commanding officer (if a commissioned officer) may act as deck court officer. An officer empowered to order deck courts shall not designate himself for this duty unless he is the only commissioned officer attached to the vessel, navy yard or station, or command, or unless the subordinate officers are below the specified rank, in which cases he shall constitute the deck court and finally determine the cases tried by him,

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and no order appointing the court need be issued, but the officer in question shall enter on the record that he is "the only officer (of the required rank) attached to the vessel (navy yard) (naval station) (present with the command)." When the commanding officer is not of or above the rank of lieutenant, and when there are other officers attached to the command who are not of or above the rank of lieutenant, the proper entry for the commanding officer who acts as deck court officer to enter on the record is the following: "The only officer attached to the vessel (or command) authorized to act as deck court officer."

SPECIFICATIONS.

470. What specification must state.—The specification for a deck court should be brief, but in each specification it is necessary to set forth: (*a*) The name and rate of the accused; (*b*) the offense and date of commission thereof; (*c*) all material facts connected with the offense. While the specification for a deck court may be less formal than that for a summary or general court-martial, yet the general principles set forth in Chapter VI, except such as refer to the *charge*, apply. In every case the convening authority should take care to see that the statement of facts of the alleged offense, as set forth therein, actually constitutes a legal offense, and that the offense is set forth clearly and explicitly, and is not left to be implied.

471. Offenses triable by deck court.—The jurisdiction of a deck court is expressly limited to "minor offenses." (Act of Feb. 16, 1909, sec. 1, quoted on p. 45.)

DECK COURT OFFICER.

472. Not sworn.—The officer constituting a deck court is not sworn, as he performs his duty under the sanction of his oath of office.

473. Duties of.—The deck court officer conducts the trial. He summons witnesses, if any. (See sec. 422.) He administers the oath to the recorder and witnesses and conducts the examination of the latter. (See sec. 437.) He records the finding and sentence and signs the record. (See sec. 469.) The deck court officer shall not be a witness either for the prosecution or for the defense.

THE RECORDER.

474. Personnel of.—See act of February 16, 1909, section 3, quoted on page 45.

475. Sworn to keep true record.—The recorder shall be sworn to keep a true record of the proceedings of a deck court. He is not empowered to conduct any examination of witnesses.

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ACCUSED.

476. Consent of accused necessary.—When an enlisted man is brought before the deck court for trial he shall signify his willingness to be so tried by affixing his signature to a statement to that effect in the record. If he objects to being so tried, "trial shall be ordered by summary or general court-martial as may be appropriate." (Act of Feb. 16, 1909, sec. 7.) But refusal of trial by deck court shall not be mentioned in the record of such latter court. (C. M. O. 24, 1909, 3.)

477. Right to appeal.—See section 492.

OATHS.

478. The deck court officer shall administer to the recorder the same oath as prescribed for the recorder of a summary court-martial:

Oath for recorder.—"You, A. B., do swear (*or* affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof." (A. G. N. 28.)

479. Each witness before a deck court must, prior to giving his testimony, be sworn by the deck court officer as follows:

Oath for witnesses.—"You do solemnly swear (*or* affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God. (*or*; this you do under the pains and penalties of perjury)." (A. G. N. 41.)

POSTPONEMENT.

480. The officer ordering the court shall determine when cases will be brought to trial; but, whenever practicable, the trial shall take place within 48 hours after the offense is committed.

PROCEDURE.

481. The general provisions laid down in Chapter XI and the procedure as to the arraignment, pleading, and conduct of a trial by summary court-martial therein prescribed, shall, in general and where not inconsistent with the present chapter, apply to deck courts. In taking down testimony adduced before a deck court, however, the facts established by the testimony only need be recorded, and the same shall be submitted to the convening authority on a separate sheet.

FINDING.

482. To be in handwriting of deck court officer.—The finding should never be typewritten, but shall be in the handwriting of the deck court officer. See section 439 under summary courts-martial, which applies to deck courts.

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PREVIOUS CONVICTIONS.

483. Cases submitted for trial by deck court shall be accompanied by record of previous convictions, or by a statement to the effect that none such exists. When previous convictions are considered in determining the sentence, a note to that effect shall be entered upon the record. (For convictions which may be considered in this connection, see secs. 327–329.)

THE SENTENCE.

484. Punishments which may be imposed.—See act of February 16, 1909, section 2, quoted on page 45. In computing 20 days' loss of pay, fractions of a cent, as shown by the Navy pay tables, will be disregarded, and the lower whole number chosen as 20 days' pay. See sections 441 to 449, under summary courts-martial, which, in general and where consistent with the statutory restrictions on the punishments which a deck court may impose, apply to the sentences of deck courts. Delay in the trial of an accused may be considered by a deck court in adjudging sentence.

485. The sentence to be in the handwriting of the deck court officer.—The sentence shall never be typewritten, but shall be in the handwriting of the deck court officer.

REVIEWING AUTHORITY.

486. Execution of sentence.—Upon the approval of the officer convening a deck court, or his successor in office, the sentence may be carried into effect. (Act of Feb. 16, 1909, sec. 4, quoted on p. 45.) When, in accordance with the provisions of section 469, the officer empowered to order deck courts himself acts as deck court, the signature of such officer upon the record is sufficient without special notation of approval.

487. Power to remit.—See act of February 16, 1909, section 4, quoted on page 45.

488. Order to pay officer.—See section 464, under summary courts-martial, which applies also to cases in which a deck court adjudges a loss of pay.

489. Transcript for log and record.—A transcript of a trial by deck court shall be made and furnished for the log and record of the man tried as in the case of a trial by summary court-martial. (See sec. 465.)

RECORD OF PROCEEDINGS.

490. Certificate of medical officer.—See section 364, which applies also to cases in which a deck court sentences a man to solitary confinement on diminished rations for a period exceeding 10 days.

491. Certificate of pay officer.—See section 464.

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492. Disposition of record.—The record of a deck court shall, when completed, be at once forwarded by the convening authority to the Judge Advocate General. Should the accused desire to make an appeal to the Secretary of the Navy within the period of 30 days, as prescribed by law (act of Feb. 16, 1909, sec. 6, quoted on p. 46), such statement as he may wish to make shall be submitted in writing and appended to the record of testimony, separately therefrom, and shall be forwarded therewith to the Navy Department (office of the Judge Advocate General). As the Secretary of the Navy reviews such appeal, no action by any intermediate authority is required.

493. Testimony to be forwarded only in cases of appeal.—Except in cases of appeal separate sheets containing the testimony of witnesses called in a deck court should not be forwarded to the department as a part of such records, as the testimony thus recorded is intended only for the guidance of the convening authority in his approval or disapproval of the finding and sentence. (C. M. O. 29, 1914, 3.)

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XIII.

COURTS OF INQUIRY.

(A. G. N., 55 to 60, and
subsequent statutory enactments
cited thereunder.)

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COURTS OF INQUIRY.

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WHEN CONVENED.

494. Purpose.—In important cases, where the facts are various and complicated, where there appears to be ground for suspecting criminality, or where crime has been committed, or much blame incurred without any certainty on whom it ought chiefly to fall, a court of inquiry affords the best means of collecting, sifting, and methodizing information for the purpose of enabling the convening authority to decide upon the necessity and expediency of further judicial proceedings. But the proceedings of a court of inquiry are in no sense a trial of an issue or of an accused person. The court performs no real judicial function; it is convened only for the purpose of informing the convening authority in a preliminary way as to the facts involved in the inquiry. (C. M. O. 7, 1914, 6.)

495. When to be convened.—Officers so empowered are expected, on the occurrence of any matter serious enough in their judgment to require thorough investigation, to order a court of inquiry as soon as practicable. Among such occurrences are included the following:

496. Accident involving loss of life.—Whenever an accident involving loss of life of any person or persons occurs on board a vessel of the Navy, at a navy yard or naval station, or elsewhere within the jurisdiction of the Navy Department, or whenever such accident

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occurs elsewhere and it is possible that any person in the naval service is in any degree responsible therefor, a court of inquiry shall be ordered to investigate fully and report upon the circumstances connected therewith and to give an opinion in regard thereto. This court of inquiry shall be in addition to the board of inquest prescribed in section 596. The court of inquiry shall in every such case ascertain whether the loss of life was due in any manner to the fault, negligence, or inefficiency of any person or persons in the naval service or connected therewith; and, if so, the names of such person or persons, and to what extent the fault, negligence, or inefficiency thereof contributed to the accident or to the results thereof. In every case where the deceased was in the naval service or connected therewith, the court shall carefully investigate and state in the record whether, in its opinion, his death was due to disease contracted, or casualties or injuries received while in the line of his duty and not the result of his own misconduct; and the court shall set forth fully the reasons for its conclusion. (See secs. 609–613 defining "line of duty" and "misconduct.") The flag officer, commandant, or senior officer present shall at once order the board of inquest when such an accident occurs, and, if authorized by law to do so, the court of inquiry prescribed by this section. If he is not empowered to order a court of inquiry, he shall immediately forward the report of the board of inquest to the next superior in command who is so empowered, who will convene the requisite court of inquiry as soon thereafter as practicable.

497. **Cases involving serious damages.**—Officers so empowered shall cause investigation to be made by a court of inquiry of all serious cases of collision, grounding, fire, accidents to hull, spars, machinery, and boilers, or other important casualties which they deem necessary to be investigated. (See secs. 546–554 for cases involving the loss or grounding of a ship.) And they shall also cause investigation to be made by a court of inquiry of any marked deficiency affecting the battle efficiency of a vessel under their command or its readiness for service. When, under the circumstances set forth herein, a court of inquiry can not be convened, a board of investigation must be ordered. (See Chap. XVI.)

CONVENING AUTHORITY.

498. **Who may order.**—See article 55, A. G. N., as affected by the act of August 29, 1916, quoted thereunder.

CONSTITUTION.

499. **Constitution.**—See article 56, A. G. N.

500. **Rank and corps of members.**—The composition of the court, both in regard to the rank of its members and the corps to which they

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belong, shall be regulated by the circumstances to be inquired into. In case the conduct or character of an officer may be implicated in the investigation, no member of the court shall, if practicable, be his junior in rank. And should such officer not be of the line, it is proper, if the exigencies of the service permit, that one or more officers of the corps to which he belongs be detailed for duty on the court.

501. Less than three members may legally constitute a court of inquiry.—The provision of article 56, A. G. N., that "a court of inquiry shall consist of not more than three commissioned officers as members" is not construed as requiring three members to constitute such court. Courts of inquiry consisting of but one member have been held to be legally constituted. (See Ct. Inq. Rec. No. 5864; 6333.) But, should the number of members named in the order convening the court be reduced, the court can not proceed without authority from the officer who convened it.

502. Challenge of a member.—A member of a court of inquiry may be challenged for cause by any party to the inquiry. (See sec. 523.)

PRECEPT.

503. The precept of a court of inquiry shall, in addition to naming the membership of the court and setting the time and place of meeting, state clearly and concisely the matter that is to be inquired into and shall contain explicit instructions as to what the report of the court thereon shall include and as to any other matters relative to the procedure of the court regarding which instructions are deemed necessary. Neither the record of a board, previously held in reference to the same subject matter, nor papers of any kind shall be attached to or made a part of the precept of a court of inquiry. Such records or papers may, however, as a separate matter, be sent to the judge advocate for the purpose of assisting him to bring out all the facts in regard to the matter under inquiry. The precept of such court shall also specifically name, as defendants and interested parties, all persons who appear to be such from the outset. (See sec. 539.)

THE PRESIDENT.

504. Duties of.—It is the duty of the president of a court of inquiry to administer the oath to the judge advocate and to the witnesses, to preserve order, to decide upon matters relating to the routine of business, and to adjourn the court as, in his judgment, will be most convenient and proper for the transaction of the business before it; but should objection be made by any member of the court to an adjournment announced by the president, the question shall be submitted to and decided by the court.

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THE JUDGE ADVOCATE.

505. Duties of.—It is the duty of the judge advocate of a court of inquiry—

(*a*) To summon all the witnesses required for the investigation and to lay before the court a list of them. (See secs. 122–132.)

(*b*) To administer the oath or affirmation to the members of the court.

(*c*) To record the proceedings of the court under its direction and control, and to make up the record. (See Chap. VII.)

(*d*) To conduct the examination of witnesses. (See secs. 133–177.)

(*e*) To assist the court in systematizing the information it may receive, to minute in the proceedings the opinion of the court, if called for, and to render to the court such assistance as will enable it to lay all the circumstances of the case before the convening authority in a clear and explicit manner.

(*f*) In conjunction with the president of the court, to authenticate the proceedings by his signature.

(*g*) In general he is the prosecutor of the case and is responsible for bringing out all the facts.

PARTIES TO THE INQUIRY.

506. Complainant.—When a court of inquiry is ordered to inquire into the facts in connection with the accusations or complaint made by any person to the convening authority, such person is known as the complainant and may be allowed to remain in court during the inquiry and make suggestions to the judge advocate.

507. Defendant and interested party.—A person whose conduct is the subject of investigation before a court of inquiry is a defendant to the proceedings of such court; a person against whom there stands no accusation but who may become involved or may be otherwise interested in the outcome of such investigation is an interested party thereto. Should it at any time during the course of the inquiry appear that an interested party becomes involved in such a way that an accusation against him may be implied, it is the duty of the court to inform such party that his status has changed to that of defendant. It is the right of both a defendant and an interested party to be present at the inquiry.

508. Counsel or friends to parties allowed to be present.—The complainant and all defendants or interested parties before a court of inquiry may be allowed to have friends or counsel present during open court.

509. Officer or enlisted man under investigation may be excused from duty.—An officer or enlisted man whose conduct is to be investigated by a court of inquiry need not necessarily be held in detention for

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that purpose. He may, however, if necessary, at his own request, be excused by his superior or commanding officer from other duty during such an investigation.

510. Duty of convening authority to parties to inquiry.—The convening authority should cause to be notified the complainant (if any) and any persons who appear from the outset to be defendants or interested parties to the inquiry of their right to be present during the investigation.

511. When proceedings indicate interested parties.—If it should appear at any stage of the proceedings of a court of inquiry that any person or persons, not named as interested parties or defendants from the outset, are implicated in the matter under investigation in such a way as to make them interested parties or defendants thereto, they should be called before the court, informed of all the evidence that tends to implicate them, and instructed as to their right to be present and be represented by counsel. (See, in this connection, sec. 507.)

512. Rights of defendant and interested party.—A defendant shall, at his own request but not otherwise, be a competent witness. (20 Stat., 30.) An interested party may be required to testify, but in every case a witness may decline to answer any question which tends to incriminate himself. See article 59 A. G. N. as to the rights of parties in connection with the examination of witnesses. It is also the right of a defendant or interested party, if he so desires, to make a statement to the court in regard to his connection with the subject matter of the inquiry. As to further rights of such party see secs. 507, 508, and 513.

513. Parties may introduce evidence.—When the judge advocate has introduced all the evidence on the part of the Government, the complainant, defendant, and interested parties, if any, may introduce evidence in the same manner as the accused in a court-martial.

CLERK—STENOGRAPHER—INTERPRETER—ORDERLY.

514. Employment of clerk, stenographer, or interpreter.—With the sanction of the convening authority, a court of inquiry may avail itself of the services of a clerk, stenographer, or interpreter, but such person or persons shall be sworn, and shall not be allowed to be present in closed court.

515. Detail of orderly.—At the request of the judge advocate of the court, the commanding officer of the immediate command within which the court is to sit shall direct an orderly to attend upon its meetings and execute its orders.

PROCEDURE.

516. Rule of assembling.—Courts of inquiry shall assemble at the place and, as nearly as practicable, at the time named in the order

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convening them, but may adjourn, when desirable, to such place as may be convenient to the inquiry.

517. Need not meet daily.—Courts of inquiry, unlike general courts-martial, need not meet from day to day, but have power to adjourn for such period as may be necessary, without requesting permission of the convening authority.

518. Court closed for consideration of preliminary matters.—The court on first assembling is usually closed until the order constituting it, and the instructions contained therein (see sec. 503), are read and the mode of procedure has been decided upon.

519. Open or closed court.—Whether the investigation shall be held in open court or closed court must depend upon the nature of the matter to be investigated, and, if not specified by the convening authority shall be decided by the court.

520. Judge advocate does not withdraw when court is closed.—The judge advocate of a court of inquiry does not withdraw when the court is cleared.

521. Parties introduced.—After the mode of procedure has been decided upon by the court, the complainant, defendants, and interested parties, if any, should be called before the court and the precept should be read by the judge advocate.

522. When there is no defendant or interested party.—When the court is convened to inquire into certain facts, and no person is placed in the position of defendant or interested party, all that relates to such party in the procedure will necessarily be omitted.

523. Challenge of member.—In the case of challenge of a member the procedure is the same as laid down for general courts-martial. (See secs. 277–282.)

524. Witnesses.—When the court is ready to proceed with the investigation, the witnesses shall be called before it separately, sworn by the president, and examined. (See A. G. N. 57.) For rules governing the attendance and examination of witnesses and the introduction of evidence see Chapter VIII.

525. Parties to inquiry may introduce evidence.—See section 513.

526. Statements and arguments.—Arguments may be made or statements submitted by the parties to the inquiry in accordance with the procedure laid down under general courts-martial. (See secs. 311–317.)

527. Proceedings and instructions to be examined.—After all the evidence is in and statements and arguments, if any, have been received, the court should be cleared, the proceedings read over, and the instructions contained in the order by which the court is constituted should be carefully examined and scrupulously followed.

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OATHS.

528. To members.—The judge advocate, or person officiating as such, shall administer to the members the following oath or affirmation:

"You, A. B., C. D., E. F., do swear (*or* affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality." (A. G. N. 58.)

529. To the judge advocate.—When the oath has been administered to the members of a court of inquiry, the president of the court shall administer to the judge advocate, or person officiating as such, the following oath or affirmation:

"You, A. B., do swear (*or* affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing." (A. G. N. 58.)

530. To witnesses.—When the court is ready to proceed with the investigation, the witnesses shall be called before it separately, and the president of the court shall administer to each the following oath (or affirmation):

"You, A. B., do solemnly swear (*or* affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the matter under inquiry, so help you God (*or* this you do under the pains and penalties of perjury)." (A. G. N. 41.)

531. To stenographer.—Administered by the judge advocate:

"You, A. B., swear (*or* affirm) faithfully to perform the duty of stenographer (clerk) in aiding the judge advocate to take and record the proceedings of the court, either in shorthand or in ordinary manuscript."

532. To interpreter.—Administered by the judge advocate:

"You, A. B., swear faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the party whose conduct is the subject of this inquiry or in the matter under inquiry."

FINDINGS AND OPINION.

533. Findings and opinion, if required.—After mature deliberation on the testimony recorded during the inquiry, the court shall proceed to report the facts, and, if so directed, an opinion on the merits of the case and the propriety or expediency, or otherwise, of further action. (See A. G. N. 57.) If the court should be of the opinion that further proceedings should be had in the matter, it should state what proceedings and include in its report the name of the person or the persons against whom such proceedings should be had, and the

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specific matter upon which such proceedings should be had. (See sec. 496 in connection with the findings and opinion of a court of inquiry on an accident involving loss of life.)

534. Facts defined.—When a court is required to report facts, it is not to be understood that the bare record of the testimony is meant, but also the result and conclusion of the court from hearing the evidence.

535. Opinion of court not to be disclosed.—It is held to be a breach of discipline on the part of any member of a court of inquiry to disclose or publish the opinion either of the court or of the individual members thereof without the sanction of the officer to whom the proceedings have been submitted.

536. Finding and opinion may be typewritten.—The finding and opinion of a court of inquiry need not be in the handwriting of the judge advocate, but may be typewritten.

537. Minority report.—If a member does not concur with the findings or opinion of the court, he shall append his reasons for dissent and subscribe his name thereto. The report of the court shall be based upon the opinion of the majority.

Record of Proceedings.

538. Making up the record.—See instructions laid down in Chapter VII.

539. Precept to be prefixed to original copy of the proceedings.—The original of the order constituting a court of inquiry shall be prefixed to the original copy of the proceedings.

540. Authentication of proceedings.—The proceedings of a court of inquiry must be authenticated by the signatures of the president and the judge advocate of the court (A. G. N., 60); they are then to be submitted to the convening authority for his consideration, after which the court may adjourn temporarily to await his further instructions.

541. Record—Number of copies—Disposition after convening authority has acted thereon.—In cases in which no material is involved the original copy of the proceedings of a court of inquiry is all that is required. After action thereon by the convening authority it shall be forwarded direct to the office of the Judge Advocate General. But in cases in which the alteration, repair, or loss of material is involved, there shall be made, in addition to the original, a partial copy covering material. The original shall be complete in every particular and shall be plainly marked "Original" at the top of the title page. The copy shall include all evidence in regard to the material concerned and so much of findings and opinion as relates to material alone—such parts as relate to disciplinary action being omitted from

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this copy. Such partial copy shall be plainly marked at the top of the title page "Partial copy covering material." Both the original and the partial copy are forwarded by the convening authority to the office of the Judge Advocate General, from which office the original copy dealing with disciplinary features is referred to the Bureau of Navigation and the partial copy covering material is referred to the Chief of Naval Operations (Material). In cases in which copies other than those mentioned herein are desired, the convening authority shall so direct in the letter ordering the court. When the Secretary of the Navy is the convening authority the copies required herein shall be sent by the court direct to the office of the Judge Advocate General.

542. Parties to the inquiry not entitled to copies of the proceedings.—No party to the inquiry can demand a copy of the proceedings. The evidence, findings, and opinion, of whatever nature, are intended only for the officer ordering the court.

Revision.

543. New evidence admissible in revision.—The proceedings of a court of inquiry may be revised as often as the convening authority may deem necessary. New evidence may be received and recorded on every such revision, and any of the previous witnesses may be recalled and reexamined with a view to eliciting further information, provided, in either case, that all parties to the inquiry are present, if they so desire.

Reviewing Authority.

544. Courts of inquiry records are reviewed by the convening authority, who shall take such further action upon the matters disclosed by the inquiry as he may deem appropriate or shall submit the proceedings to the Secretary of the Navy at the earliest opportunity in order that the latter may take such action thereon as may be advisable. (See sec. 541.)

Dissolution.

545. The court is dissolved by order of the convening authority.

Inquiry into the Loss or Grounding of a Ship of the Navy.

546. Whenever a court is appointed to inquire into the cause of the loss of a ship, or of her having touched the ground, the following points, as far as pertinent, are invariably to be included in the investigation:

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547. Documentary evidence to be required.—The rough log book, commanding officer's night order book, and the chart by which the ship was navigated, or one of the same, must, if practicable, be produced in court.

548. Latest determination of ship's position.—The court shall investigate whether the proper chart, provided by the Navy Department, was used; whether the position of the ship at the last favorable opportunity was accurately determined, by observation or otherwise; and, if not, when it was last accurately ascertained.

549. Log book to be examined.—The court shall also determine whether the courses steered and the distances run on the day before the ship grounded were correctly inserted in the log book; also, when the error for local deviation was last obtained.

550. When land was made.—If land was made, and the distance estimated before the ship struck, it is to be ascertained what steps were taken during the time it was in sight to correct the ship's run.

551. Whether instructions have been obeyed.—The court shall rigidly investigate the manner in which the instructions contained in the regulations, to officers commanding ships on approaching land, were observed.

552. Examination of the ship's position.—Some competent officer not attached to the ship, the loss or grounding of which may be the subject of inquiry, shall be directed to work up the reckoning of that ship from the data obtained from her navigating officer, to enable the court to fix the true position of the ship at the time of her taking the ground. The officer appointed to perform this duty shall submit to the court in writing, attested by his signature, the result of his work, to the accuracy of which he shall be sworn. The position of the ship so determined shall be laid off on the chart by which she was navigated, as also her position when ashore, as determined by cross bearings taken from the log book. The rate and direction of the tide stream and the time of tide shall be stated, if possible.

553. Documents to accompany the record.—Any of the documents referred to in sections 547 and 552 which were used in the inquiry, with an attested extract from the log, commencing at least 48 hours before the ship touched the ground, if pertinent, are to accompany the record of the court.

554. Official report of the commanding officer to be required.—Whenever inquiry is made into the loss of a ship, the court shall call for the official report of the commanding officer of such ship, containing the narrative of the disaster, and this report shall be read in court in the presence of the commanding officer and of such of the surviving officers and crew as can be assembled, and shall be appended to the record.

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555. Questions to be asked by the court.—After these survivors have been sworn as witnesses, the following questions shall be put to them by the court: (1) (To the commanding officer) "Is the narrative just read to the court a true statement of the loss of the United States ship ———?" (2) (To the commanding officer) "Have you any complaint to make against any of the surviving officers and crew of the said ship on that occasion?" (3) (To the surviving officers and crew) "Have you any objections to make in regard to the narrative just read to the court, or anything to lay to the charge of any officer or man with regard to the loss of the United States ship ———?"

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XIV.

GENERAL INSTRUCTIONS GOVERNING THE PROCEDURE OF BOARDS.

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GENERAL INSTRUCTIONS GOVERNING THE PROCEDURE OF ALL BOARDS.

556. Precedence of members.—Officers on boards shall take their seats in the same order of rank or seniority as on courts-martial. (*See* sec. 236.)

557. Duties of senior member.—The senior member or president of a board shall preserve order, decide upon matters relating to the routine of business, such as recess, and may adjourn the board from day to day, at and to such hours as in his judgment will be most convenient and proper for the transaction of the business before it; but should an objection be made by any other member of the board to a recess or adjournment announced by the senior member, a vote shall be taken with regard to it, and the decision of the majority shall govern.

558. Quorum necessary.—No board shall transact any business other than an adjournment unless a majority of the members be present, except when the officer ordering the board so authorizes.

559. Unauthorized absence forbidden.—No member of a board shall fail in his attendance at the appointed times, unless prevented by illness or by some insuperable difficulty, ordered away by competent authority, or excused by the officer ordering the board, except that a short temporary absence may be allowed by the senior member of the board; nor shall a member leave the vicinity of the place at which a board is assembled, unless authorized to do so by the officer who convened it, or by his superior.

560. Absence reported.—In case of absence of a member the senior officer present of the board shall inform the officer ordering the board of the fact, and also of the reasons for the absence, if known to him, in order that the vacancy may be filled, if such officer deems necessary.

561. Members voting after absence.—A member absent during the investigation of any matter or case shall not vote upon a decision with regard to it, unless, if necessary to arrive at a conclusion, a reinvestigation take place in the presence of that member and of the interested parties.

562. Interpreter.—A competent officer of any branch of the service will be added, if necessary, to any board by which candidates are to

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be examined in a foreign language, or before which an investigation may take place wherein the services of an interpreter may be required.

563. Recorder—Report of board.—A competent person may be appointed by the officer who orders the board to record its transactions and, under its direction, to draw up the report of the board, which shall be based upon the opinion of the majority. This report shall be signed by all the members who concur. (*See* sec. 565.)

564. Junior member to act as recorder when none is appointed.—In case a recorder has not been designated in the convening order, the junior member shall act as recorder; but, in that event, the report, based upon the opinion of the majority, shall be drawn up by the senior member and shall be signed as provided for above.

565. Nonconcurring members.—Those members who do not concur with the report of the board shall append their reasons for dissent and subscribe their names thereto.

566. Findings and opinion not to be disclosed.—Neither the findings nor opinion of a board or investigation shall be disclosed without proper authority. (*See* sec. 535.)

567. Findings and opinion may be typewritten.—The findings and opinion of a board or investigation may be typewritten.

NOTE.—The instructions contained in the following chapters govern the procedure of all boards in the Navy, except those that are administrative rather than judicial in character, such as boards of survey, boards of medical survey, boards of selection for promotion, and certain boards organized for the purpose of inquiry and report in regard to administrative features. Types of the special boards last alluded to are such boards as the fire-control board and the personnel board convened at times at the Navy Department; the procedure of such boards will be governed largely by the character of the matter to be inquired into and such special instruction as they may receive in each case.

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XV.

INVESTIGATION.

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INVESTIGATION.

568. By whom ordered and how constituted.—A senior officer present, who is not empowered to order courts of inquiry, or one who is so empowered and considers that the interests of the service will be better served by an investigation as set forth herein, may order one officer to conduct an investigation for the purpose of inquiring into any matter in regard to which the Navy Department should be informed.

569. Authority for such investigation.—The authority for such investigation is based upon section 183, Revised Statutes, as amended by the act of February 13, 1911 (36 Stat., 898), which reads as follows:

> Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army, Navy, Marine Corps, or Revenue-Cutter Service, detailed to conduct an investigation, and the recorder, and if there be none, the presiding officer of any military, naval, or Revenue-Cutter Service board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigations.

570. Precept.—The precept, or letter to the investigating officer, shall refer to the above statutory authority and shall supply such officer with the instructions and information necessary to the conduct of the investigation, for which latter purpose reference may be made to attached papers. It shall also name the parties to the investigation.

571. Power to administer oaths.—The above act (see sec. 569) expressly gives an investigating officer, detailed in accordance with its terms, authority to administer oaths.

572. Oath to stenographer.—The following oath shall be administered by the investigating officer to the stenographer (clerk) if any be detailed:

"You, A. B., swear (or affirm) faithfully to perform the duty of stenographer (clerk) in taking and recording the proceedings of the investigation, either in shorthand or in ordinary manuscript."

573. Oath to witness.—The following oath shall be administered by the investigating authority to witnesses:

"You, A. B., do solemnly swear (or affirm) that the testimony you shall give in the matter of ——— now in hearing shall be the truth,

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the whole truth, and nothing but the truth, so help you God (or, this you do under the pains and penalties of perjury)."

574. Investigation—How conducted—Closed or open doors.—Whether the investigation shall be conducted with closed or open doors must depend on the nature of the matter to be examined, and, if not specified by the officer ordering the investigation, shall be decided by the investigating officer.

575. Rights of parties to the investigation.—The parties to the investigation have the same rights as the parties to a court of inquiry. (See secs. 506–513.)

576. Summoning witnesses.—Sections 11 and 12 of the act of February 16, 1909, quoted under article 42, A. G. N., do not give an investigating officer the power accorded to general courts-martial and courts of inquiry to compel the attendance of civilian witnesses. The attendance of a civilian witness before an investigation is, therefore, not compellable, and the provisions of section 422 in regard thereto apply. (For general instructions governing the summoning of witnesses see secs. 122–132.)

577. Procedure.—In general the procedure laid down for courts of inquiry will be followed. (See secs. 516–527.)

578. Findings.—After mature deliberation on the evidence introduced during the investigation, the investigating officer shall report the facts found to be established. He shall not, unless so directed by the officer who ordered the investigation, give an opinion on the merits of the case. Ordinarily such opinion should not be requested in view of the fact that but one officer constitutes such investigation.

579. Record of proceedings.—See sections 538–542 under courts of inquiry, which in general apply to the record of an investigation. The provisions of section 541 in regard to the disposition of the records of courts of inquiry apply to the records of investigations, except that in the case of an investigation conducted by an officer or by a civilian official or clerk, in regard to a subject not pertaining to the naval service, the report shall be in duplicate and shall be forwarded direct to the Secretary of the Navy (Office of the Solicitor).

580. Revision.—See section 543 under courts of inquiry, which applies to an investigation.

581. Reviewing authority.—See section 544 under courts of inquiry, which applies to an investigation. (See sec. 579 as to disposition of record.)

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XVI.

BOARDS OF INVESTIGATION.

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BOARDS OF INVESTIGATION.

582. By whom ordered.—A senior officer present, who is not empowered to order courts of inquiry, may order a board of investigation. Also an officer who is empowered to order a court of inquiry may, under the circumstances hereinafter mentioned, order a board of investigation.

583. When ordered.—A board of investigation should be ordered to investigate any casualty, occurrence, or transaction in regard to which the department should be informed and under the circumstances set forth in section 497, when the senior officer present is not empowered to order courts of inquiry, or when the senior officer present, if so empowered, deems it advisable to order such board in lieu of a court of inquiry.

In case of collision with merchant vessels.—In the event of a collision between a ship of the Navy and a merchant vessel so serious or under such circumstances as not to admit of immediate repair with the resources at hand, and therefore likely to involve damages, a board of investigation shall be ordered by the senior officer present to ascertain all the attendant circumstances, injuries received by the merchant vessel, probable amount of damages, and which of the ships is responsible for the accident; and the master of the merchant vessel concerned shall be notified of the time and place of meeting of the board and informed that the officers and men of his vessel will be given a hearing by the board, if such hearing is desired. For instructions concerning the preparation and forwarding of the report of such board see section 593. (For additional steps to be taken in such cases see Naval Instructions, 1913, I-941.)

584. Constitution.—A board of investigation shall consist of three officers as members. A separate recorder may be detailed at the discretion of the officer ordering the board. (See secs. 563 and 564.)

585. Precept.—The precept or convening order, in addition to naming the membership of the board and setting the time and place of meeting, shall state clearly and concisely the matter that is to be investigated and what the report of the board thereon shall include. See section 503, which in general applies to the precept for a board of investigation.

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586. Powers of a board of investigation.—Boards of investigation, although they shall collect material information from apparent or known facts, or from written evidence which they may possess, and shall record the declarations of persons examined before them, will not take testimony under oath except in important cases in which the order convening the board expressly states that such board is authorized to administer oaths to witnesses in accordance with section 183 of the Revised Statutes, as amended by the act of February 13, 1911 (36 Stat., 898), quoted in section 569.

587. Oaths.—When a board of investigation is expressly empowered to administer oaths, the oaths given in sections 572 and 573 shall be administered by the recorder.

588. Investigation—How conducted—Closed or open doors.—See section 574, which applies to a board of investigation.

589. Rights of parties to the investigation.—The parties to an investigation conducted by a board of investigation have the same rights as the parties to a court of inquiry. (See secs. 506–513.)

590. Summoning witnesses.—See section 576, which applies to boards of investigation.

591. Procedure.—In general the procedure laid down for courts of inquiry will be followed. (See secs. 516–527.) Boards of investigation, however, do not ordinarily, except as noted in section 586, take testimony under oath, and the statements of unsworn witnesses before such board shall be recorded as declarations.

592. Findings and opinion.—The board, after mature deliberation, shall make a report of its findings, stating fully, clearly, and as concisely as possible all the facts of the case. When required by the order convening it, the board will give its opinion as to the merits of the case. Such opinion should be recorded immediately after the facts which have been established. (See secs. 563–567.)

593. Record of proceedings.—See sections 538–542 under courts of inquiry, which in general apply to the record of a board of investigation. The provisions of section 541 in regard to the disposition of the records of courts of inquiry in general apply to the records of boards of investigation, but when a board is ordered to investigate a collision with a merchant vessel (see sec. 583) the report of such board should be prepared in quadruplicate—one copy to be forwarded without delay to the Navy Department, one retained by the senior officer present, one furnished to the commanding officer of the naval vessel concerned, and the remaining copy given to the master of the merchant vessel, provided that the officers and crew thereof who were witnesses to the collision shall have testified before the board. When repairs have been effected on the spot, a

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certificate of the fact shall be taken from the master and forwarded, through the commander in chief, to the Secretary of the Navy.

594. Revision.—See section 543 under courts of inquiry, which applies to a board of investigation.

595. Reviewing authority.—See section 544 under courts of inquiry, which applies to a board of investigation. (See sec. 593 as to the disposition of record.)

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XVII.

BOARDS OF INQUEST AND "LINE OF DUTY" AND "MISCONDUCT" CONSTRUED.

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BOARDS OF INQUEST.

596. By whom and when ordered.—In all cases of death occurring in the Navy as the result of an accident, or attended with unnatural or suspicious circumstances, the senior officer present shall order a board of inquest to assemble and investigate the matter. (See sec. 496.)

597. Constitution.—Such boards shall be composed of not less than three commissioned officers, of whom one at least shall be of the Medical Corps. A separate recorder may be detailed at the discretion of the officer ordering the board. (See secs. 563 and 564.)

598. Precept.—The precept or convening order names the membership of the board and states the matter to be investigated.

599. Oaths not authorized.—Neither the members of the board nor any person that may be examined shall be sworn.

600. First duty of the board.—The board shall, after convening, first proceed to the spot where the body has been found, or where it may be, identify it, examine into its condition, and note its surroundings, for the purpose of discovering if possible some evidence that may tend to throw light on the matter. If the body of the deceased shows wounds or bruises such as to indicate or create suspicion that he came to his death by violent means, it shall be the duty of the board to ascertain, with as much exactness as possible, the precise nature of the wounds or blows and of the instrument by which they were inflicted. The medical member of the board shall be required, after a careful examination of the body, to give his opinion as to the cause of death, and such opinion shall be entered separately in the record.

601. Assembling of board to receive evidence.—The board shall then return to the place of convening and receive and record all the evidence procurable relative to the manner in which the deceased came to his death. If there is reason to suspect a homicide, the board shall endeavor to ascertain the person or persons, if any, directly responsible for the homicide, if there were any aiders or abettors, and such other particulars as may afford the means of drawing up, with the precision required by the law, the necessary charges and specifications against the person or persons accused of the homicide.

602. Summoning witnesses.—See section 576, which applies to boards of inquest. Every witness who may be able to throw any

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additional light on the manner or cause of death should be called before the board.

603. Declarations of witnesses.—Boards of inquest, not being empowered to administer oaths, can not take sworn testimony. The statements of witnesses before such boards are known as declarations.

604. Procedure.—The proceedings of a board of inquest are in no sense a trial but are a preliminary inquiry into the facts involved for the information of the convening authority, and it is necessary that this officer, in reviewing the proceedings, should have before him all the facts and circumstances that influenced the opinion of the board. To this end the declarations of witnesses shall be recorded in detail and all the facts should be set forth in the record and nothing left to inference. Material witnesses as to facts should be examined first in order that their declarations may be received while the facts are still fresh in their minds and before they are afforded opportunity to absent themselves. In case of homicide, the person suspected of the crime may be called as a witness and examined, after he has been duly warned by the senior member that anything he may say before the board may afterwards be used against him. After the material witnesses have been heard, the opinion of the medical member of the board as to the cause of death shall be received (see sec. 600). In addition thereto, in order that the board may the better arrive at its opinion, medical officers other than those on the board may be called, when desirable, and asked for an opinion as to the cause of death or other attendant circumstances.

605. Opinion.—In every case the board shall, after careful investigation, state in the record their identification of the body, and whether and to what extent, in their opinion, the death of the individual was due to disease contracted or casualties or injuries received while in the line of his duty. In all cases where the board expresses the opinion that death was not in the line of duty, the board will, in addition to such opinion, state whether or not, in its opinion, the deceased met his death as the result of his own misconduct.

606. Record of proceedings.—See sections 538 and 539 under courts of inquiry, which apply to the record of a board of inquest. The record shall be transmitted by the board to the convening authority, who, under the circumstances set forth in section 496, shall order a court of inquiry; or, if not so empowered, shall immediately forward the record to his next superior in command who is so empowered. When a court of inquiry is ordered the record of the board of inquest may be transmitted to the judge advocate in order to assist him in conducting the inquiry (see sec. 503). When not so transmitted it shall be forwarded directly to the office of the Judge Advocate General. When transmitted to the judge advocate of a

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court of inquiry, it shall be forwarded together with the record of the latter.

607. Revision.—See section 543, which applies to a board of inquest.

608. Reviewing authority.—The record of a board of inquest is reviewed by the convening authority, who takes such action thereon as is appropriate to the case. (See sec. 606 as to the disposition of the record.)

"LINE OF DUTY." AND "MISCONDUCT" CONSTRUED.

"LINE OF DUTY."

609. What constitutes "line of duty."—It does not necessarily follow that in all cases where the death of a person in the service was not the result of his own misconduct it must be held to have occurred in the line of duty. Thus, in a case where it appeared that the deceased, while on leave of absence, had gone to a hotel, engaged a room, and was later found asphyxiated as the result of a gas jet in the room having been left turned on and unlighted when he retired, there was no ground for finding that the death occurred in line of duty. Granting, in such cases, that death was accidental and was not caused by any fault of the deceased, it is nevertheless patent that his death was not due to an act of duty. Also in a case in which the deceased, while on leave of absence and not performing any act even remotely connected with the service, was run over by a train, it likewise could not properly be said that his death was due to an act of duty. Similarly, when the deceased, while on liberty, was murdered by a shipmate in consequence of some difficulty between the two men of a wholly personal nature, a holding that death was due to an act of duty could not be supported. Many other cases of like character might be cited to show that there is a distinction between holding that death was not due to "misconduct" and that it occurred in "line of duty."

As remarked by the Attorney General in an opinion rendered May 17, 1855 (7 Op. Atty. Gen., 150), the law "does not say 'any disease [or injury] not the consequence of misconduct,' and if that had been the category contemplated by the legislator he would have propounded it in simple and apt phraseology." It follows, therefore, that the words "line of duty" can not properly be held to embrace every cause of death not due to the misconduct of the deceased, but are used by Congress in a more limited sense in its various enactments relating to the disability or death of persons in the Army or Navy. This conclusion is further supported by the fact that the law

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providing for the allowance of six months' pay to the widow or designated beneficiary of deceased officers or enlisted men of the Navy originally applied by its terms to cases where the death was due to "wounds or disease contracted in the line of duty"; but by act of August 22, 1912, Congress substituted the words "not the result of his own misconduct" for the words "contracted in the line of duty," this amendment being made for the express purpose of giving the law a broader application.

610. Distinction important between acts of duty and those of personal nature.—An important fact which should not be overlooked by officers serving on boards of inquest or courts of inquiry in cases of this character is that, while "every person who enters the military service of the country—officer, soldier, sailor, or marine—takes upon himself certain moral and legal engagements of duty, which constitute his official or professional obligations," nevertheless, "*though a soldier or sailor, he is not the less a man and a citizen, with private rights to exercise and duties to perform;* and while attending to these things he is not in the line of his public duty." (7 Op. Atty. Gen., 150.) In the same opinion the Attorney General further stated on this point: "It is impossible to say that the phrase *casualties or injuries received 'in the line of duty'* comprehends all the possible misadventures of mere private life, which may happen to an officer in his personal affairs, and wholly disconnected from his public duty, though he be not on furlough." In other words, as was held by the United States Circuit Court of Appeals (Rhodes *v.* U. S., 79 Fed., 740), in order to support a finding of line of duty "*the service must have been the cause of the disease* [*or injury*] *and not merely coincident with it in time.*"

611. Question not one of status.—The status of an officer or enlisted man at the time of his death or at the time of contracting the disease, or receiving the injury occasioning same, is not controlling upon the question of whether his death occurred in the line of duty. As pointed out by the Attorney General, a person in the Navy, "whilst off duty, or on furlough, or under censure * * * may do or suffer things which are in the line of duty," the same as, on the other hand, "while on active duty, he may do or suffer things not in the line of his duty," and "any rule based on the assumption of its being impossible for an officer or soldier on furlough, on leave of absence, in arrest, under sentence, to perform acts, suffer casualties, receive wounds, or incur causes of disease in the line of his duty is not a truth, and, like all things not true, can not be conformable to justice or wisdom." And, again: "A soldier or sailor, while 'under arrest,' or 'in confinement,' is not discharged from the obligation of duty, and is occasionally called upon to perform duty in which he may dis-

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tinguish himself and die honorably, and leave, it seems to me, a right of pension to his widow or children; as, for example, in the contingency of a post or a camp attacked by the enemy, or a ship in peril at sea. So, still more, of an officer on furlough. So it may be in the case of a soldier temporarily 'absent on leave,' nay, even of one compromised in some grave military offense."

It has accordingly been held by the department in the case of a man who was stabbed while on liberty that his injuries were incurred in line of duty, it appearing that he was "stabbed by a drunken cabman while endeavoring to get an injured shipmate back to his vessel, an act in the line of his duty performed while on liberty."

Ordinarily, however, the injury or death of a person in the Navy while on leave or liberty is not the result of an act of duty. In such cases he is usually in the exercise of his private rights or the performance of private duties, and his injury or death, while coincident with the service in point of time, can not be held to have been caused by the service. "All the consequences of the absence of an officer or a soldier from his post of duty on his own motion for his own purposes of business or pleasure must be regarded as outside the line of duty. While traveling from and returning to the post of duty on an ordinary furlough, given for such purposes, he is at his own risk as to causes of disability to which he may be subjected." (4 P. D., 54; 7 id., 102; 16 id., 21; House Doc. No. 5, 54th Cong., 2d sess., p. 74.) Surrounding circumstances, however, may work a modification of this rule, as in the example cited above. So also when a person returning from leave or liberty, and prior to expiration thereof, enters a boat provided by the Government for his tansportation back to his vessel, he is once more within the control of the naval authorities, and if killed or injured without the intervention of any act the result of his own misconduct, a finding of line of duty would be proper. But if he is returning to his vessel in a private conveyance of his own selection, he would not be in a line of duty status, unless actually engaged in the performance of an act of duty.

If a man is given permission to go on shore for the express purpose of engaging in athletic sports or exercises encouraged by the Navy Regulations, or permission to go swimming or boating, and is injured or killed without negligence or other act the result of his own misconduct, the finding should be line of duty. Where, however, a man is granted liberty for his own purposes, and while on liberty goes in swimming and is drowned, the mere fact that swimming is encouraged by the regulations is not sufficient ground for holding that his death occurred in line of duty. In such a case the general rule applies, and it must be held that his death resulted

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from the exercise of his private rights and was not caused by "an act of duty performed."

While a prisoner may be injured or killed in line of duty, as shown by the examples given by the Attorney General in his opinion (7 Op., 150), such cases must be exceptional ones rather than the rule. Thus, where an enlisted man is performing hard labor under sentence of general court-martial, and an injury received by him is wholly due to execution of such sentence, it can not be held line of duty. (15 P. D., 54; 5 id., 151.) If an enlisted man is arrested or imprisoned, but on trial is adjudged not guilty, a disease incurred during his arrest and imprisonment is within the line of duty. (4 P. D., 103.) If the man died while awaiting trial, a disease so contracted is held to have been incurred in line of duty. (14 P. D., 213.) But in a case where a private in the Marine Corps was burned to death while in confinement by the civil authorities, before trial, and the evidence showed that his imprisonment was the result of misconduct (drunkenness) while on liberty, his death was held not to have occurred in the line of duty.

So, also, many cases arise where the injury causing death was received while the deceased was in a duty status, so far as being present on board a vessel or at a station to which he was attached is concerned, and yet the circumstances are such that it can not be held to have been caused by an act of duty. For example, in a case where the death of a man resulted from injuries received by him while "entering a bunker and striking a match there," which acts "were both against orders," the department held that his death was the result of "misconduct or violation of duty" on his part, and was not, therefore, the result of an injury received in the line of duty. Again, it has uniformly been held that an enlisted man is not in line of duty while engaged in scuffling or squabbling with his companions, or voluntarily engaged in what is commonly known as "horseplay," although at the time on board the ship to which he was attached. (5 P. D., 47; 6 id., 22; 14 id., 81; id., 506; Rhodes *v.* U. S., 79 Fed., 740.) And "it has repeatedly been held that where the death of the soldier * * * was caused by an *overdose* of a narcotic or other poison, which had been either prescribed originally by a physician in the U. S. service or taken upon the soldier's own responsibility through mistake and with no suicidal intent, such death cause can not be accepted as a competent basis for claim." (1 P. D., 111, case of Travers, hospital steward.)

Death or injury while on duty, resulting from disability existing prior to enlistment, does not come within the "line of duty" category. (16 P. D., 172.) However, when a disability which originated prior to enlistment, but was apparently cured prior to and at the date of

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enlistment, is revived and aggravated as the immediate result of an accident or of an incident in the line of duty, the injurious consequences of such aggravation may amount to line of duty. (3 P. D., 41.) In such a case it is necessary to establish some cause or injury resulting from or incurred in service in line of duty sufficient to produce a recurrence of said disability—some cause without which the recurrence would not have happened—and not merely natural aggravation of an already existing disability. (3 P. D., 187.)

Predisposition to disease is no bar to pension if the disease did not develop until after claimant's admission to the service. (3 P. D., 228; 16 id., 413.)

612. No general rule; each case must be determined upon its own facts.—As was stated by the Attorney General in an opinion rendered July 22, 1881, with respect to the question of what constitutes disability incurred in line of duty, "it is impossible to lay down a general rule which will be applicable to cases of this kind, or to the different aspects which the * * * claim might present, as the facts shall be developed by the evidence." Thus, not even in the case of death by suicide can it be stated as an unalterable rule that it was not due to an act of duty. Suicide is, however, so unlikely a result of an act of duty that the presumption in such cases must be against line of duty in the absence of evidence affirmatively showing that it was caused by the service. This is in accordance with the Attorney General's opinion of May 17, 1855, in which it is stated that "if the suicide is alleged to have been produced by insanity, and thus insanity be put forward as the *causa causans*, then it must be shown that the insanity was the result of, or incidental to, acts of duty." So, also, in the case of Rhodes *v.* United States, it will be noted that the court refers to "a wound or injury inflicted upon himself by a soldier" as one of the cases where the injury does not result from the service, although coincident with it in time. Nevertheless, in a proper case, death by suicide may be held to have occurred in the line of duty, but the facts supporting such a conclusion must be definitely ascertained and established. (1 P. D., 111; 1 id., 108; 5 id., 32; 17 id., 50.)

While, as already stated, no general rule can be formulated applicable to all cases, it will be seen from the foregoing that the question to be determined in each case is not what was the status of the deceased when the disease was contracted or the injury received, nor whether such disease or injury was the result of his own misconduct, but "was the cause of disability or death a cause within the line of duty or outside of it? Was that cause appertaining to, dependent upon, or otherwise necessarily and essentially connected with duty within the line or was it unappurtenant, independent, and not

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of necessary and essential connection"? In other words, to constitute "line of duty" an act of duty performed must have relation of causation, mediate or immediate, to the wound, the casualty, the injury, or the disease producing disability or death."

"MISCONDUCT."

613. In a case where it appeared that the death of the deceased was due to his carelessness or negligence in stumbling over the stringpiece at the head of a dock in the navy yard while returning to his ship from liberty and falling upon a float eighteen or twenty feet below, it was held by the department that the death of the deceased was not due to his own misconduct. In accordance with precedent it must be held in such cases that, as the deceased was absent from his station and duty on liberty at the time of his death and was not actually engaged in the performance of duty, his death did not occur in the line of duty, and, under the circumstances above related, was not due to his own misconduct. Thus, negligence is not necessarily misconduct. "The term 'misconduct' implies a wrongful intention and not a mere error of judgment." (Smith *v.* Cutler (N. Y.), 10 Wend., 590, 25 Am. Dec., 580; United States *v.* Warner, 28 Fed. Cas., 404.) "In usual parlance misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand; and carelessness, negligence, and unskillfulness are transgressions of some established but indefinite rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness, an abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite." (Citizens Ins. Co. *v.* Marsh, 41 Pa. (5 Wright), 386, 394; 5 Wds. & Ph., 4531.)

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XVIII.

NAVAL EXAMINING BOARDS.

(R. S. 1493 to 1510.)

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NAVAL EXAMINING BOARDS.

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WHEN CONVENED.

614. When convened.—At stated or convenient periods, boards will be convened for the examination of candidates for appointment or promotion, and such candidates shall be duly informed of the time and place of meeting.

CONVENING AUTHORITY.

615. The act of March 4, 1917, provides:

"That hereafter the Secretary of the Navy may authorize the senior officer present, or other commanding officer, on a foreign station to order boards of medical examiners, examining boards, and retiring boards for the examination of such candidates for appointment, promotion, and retirement in the Navy and Marine Corps as may be serving in such officer's command and may be directed to appear before any such board."

CONSTITUTION.

616. Composition of board.—Boards for the mental, moral, and professional examination of officers of the Navy for promotion "shall consist of not less than three officers, senior in rank to the officer to be examined." (Sec. 1498, R. S.) Such boards shall, when practicable, be selected from the same corps as that to which the candidate belongs.

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617. Board for examination of candidates to fill vacancies in lower grades of staff corps.—The mental, moral, and professional examination of candidates to fill vacancies in the lower grades of the medical, pay, and other staff corps shall be conducted by boards constituted similarly to the above (sec. 616).

Board for examination of candidates for appointment as assistant paymaster.—Section 1379, Revised Statutes, requires that no candidate shall be appointed as assistant paymaster "until his physical, mental, and moral qualifications have been examined and approved by a board of pay officers appointed by the Secretary of the Navy, and according to such regulations as he may prescribe." Although by statute the determination of the physical, as well as the mental and moral, qualifications of the candidate is left to the board of pay officers, the physical examination of such candidate will be conducted by a board of medical examiners who shall report the result thereof to the examining board of pay officers, certifying as to the physical qualifications of the candidate, and such report shall form part of the record of the latter board.

618. Recorder.—See sections 563 and 564.

PRECEPT.

619. The precept shall set the time and place of meeting and name the membership of the board. The necessary instructions relative to the conduct of the examinations need not be contained in the precept but may accompany same or be otherwise issued. (See note, p. 113, in regard to the issuance of a precept in blank.)

CANDIDATE.

620. The responsibility of the officer under examination.—The onus of establishing professional fitness shall be held to rest entirely upon the officer under examination. The mental and moral fitness of the candidate shall be assumed unless a doubt shall be raised on either head, in the mind of any member of the board, from the answers contained in any of the interrogatories or reports on fitness, from the general reputation of the candidate, or from other sources of evidence of record.

621. No officer to be rejected without examination.—"No officer shall be rejected until after such public examination of himself and of the records of the Navy Department in his case unless he fails, after due notification, to appear before the said board." (R. S., 1503.)

622. Right of candidate to be present. Orders to candidate.—"Any officer whose case is to be acted upon by an examining board shall have the right to be present, if he so desires, and to submit a statement of his case on oath." (R. S., 1500.) The candidate shall pre-

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sent his orders as his authority for appearing before the board. The orders to a candidate shall state the grade or rank, or, if to more than one, the grades or ranks, for promotion to which the candidate is to be examined. See form, p. 443.

623. Candidate as a witness.—By the above statute (sec. 622) the candidate is authorized, if he so desires, to submit a statement to the board. Inasmuch, however, as mere *ex parte* statements of persons not subjected to cross-examination are of little weight as evidence, the proper procedure is to permit the candidate, if he so desires, to take the stand as a witness. Under such circumstances he is, of course, subject to cross-examination. Likewise, the board may call the candidate as a witness. (*See* C. M. O., 29, 1915, 6.)

624. Candidate not to be discharged before completion of case.—Care shall be taken not to discharge a candidate until his case is fully completed. This applies particularly to cases where there are unfavorable reports or other evidence.

625. In case the candidate is not ordered to appear before the board.—In cases where, owing to the exigencies of the service, it is not desirable to order a candidate to appear before an examining board, such candidate may be examined on his record only. But, if the board deem it necessary, in order to establish the fitness of the candidate, that he appear personally before it, the department shall be so informed, with the reasons therefor.

CANDIDATE FOR APPOINTMENT.

626. General requirements.—No person shall be appointed to any office in the Navy unless he is a citizen of the United States (sec. 1428, R. S.), nor until he shall have passed a physical, mental, and professional examination. (But see sec. 617 as to qualifications of candidates for assistant paymaster.)

627. Candidates failing to present themselves for examination.—Any person who fails to present himself for examination after having obtained permission shall be considered as having forfeited his right to appear.

628. Penalty for false certificate.—Any candidate who gives a false certificate of age, time of service, or character, or makes a false statement to a board of examiners, shall be regarded as disqualified.

PROCEDURE.

629. Physical examination precedes professional.—The physical examination of a candidate for appointment or promotion shall precede the mental and professional, and if he be found physically unfit, he shall not be examined otherwise; and before proceeding with the examination, the president of the naval examining board shall ascertain that the candidate has been found qualified by a

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board of medical examiners. When the contrary is found to be the case all papers in the case will be returned to the office of the Judge Advocate General.

630. Professional examination.—The professional examination will be conducted in accordance with the instructions which may be contained in or accompany the precept convening the board or which may be otherwise issued. (See sec. 619.)

631. Procedure.—The board of examiners shall be duly organized and sworn in each case, subject to challenge, in the same manner as provided for naval courts-martial. It shall have power to take testimony and to examine all matter on the files and records of the department in relation to any officer whose case is to be considered by it. (R. S., 1499.)

632. Consideration of matter relative to candidate.—There shall be submitted to the board for its consideration all matters on the files and records of the department which relate in any way to the mental, moral, or professional fitness of the officer whose case is being inquired into, with the exception of such matter as falls within the provisions of the following statute:

"That hereafter in the examination of officers in the Navy for promotion no fact which occurred prior to the last examination of the candidate whereby he was promoted, which has been enquired into and decided upon, shall be again enquired into, but such previous examination, if approved, shall be conclusive, unless such fact continuing shows the unfitness of the officer to perform all his duties at sea." (20 Stat., 165.)

633. All matters to be investigated.—Entries in the medical history of the candidate or other accompanying papers, not within the prohibition of the statute quoted in the preceding section, indicating moral or other unfitness, shall be investigated by a naval examining board.

634. Questions of law.—Any question of law arising before the board, and any communications relating to its proceedings, shall be submitted to the Judge Advocate General.

635. Incidents out of ordinary routine.—Any incidents out of the ordinary routine of the examination shall be appropriately and in proper chronological order entered in the record.

OATHS.

636. Oath administered by president to recorder.—"You, A— B—, do solemnly swear (*or* affirm) that you will keep a true record of the proceedings of this board in the case of ——— ———, now before the board and about to be examined."

637. Oath administered by recorder to members.—"You, A— B—, C— D—, E— F—, and each of you solemnly swear (*or* affirm) that

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you will honestly and impartially examine and report upon the case of ——— ———, now before the board and about to be examined."

638. Oath administered by president to witnesses.—"You, A— B—, do solemnly swear (*or* affirm) that you will make true answer to such questions as may be put to you in the case of ——— ———, now under examination by the board."

WITNESSES.

639. Witness before the board.—Any officer may be called before the board to give evidence if deemed necessary. Witnesses, before testifying, shall be sworn.

640. Summoning witnesses.—All witnesses before naval examining boards shall be summoned via the convening authority. But, as a general rule, it may be assumed that, had the candidate's professional examination and record been satisfactory to the board, it would have been unnecessary for him to summon witnesses in his behalf. Therefore, except under unusual circumstances, the convening authority can do no more than grant permission to an officer under his command, who is summoned as a witness, to be absent from his station and duty; and all the expenses of the aforesaid witness must be borne by the officer who desires to have him summoned.

641. In case the witness is to be examined upon written interrogatories.—Such questions as the candidate may reasonably request to have asked by means of written interrogatories regarding any particular matter or incident touching his fitness for promotion may be addressed by the Bureau of Navigation to any officer having knowledge of the facts, or by the convening authority if such officer be under his command. Whenever such a request is deemed unreasonable by the board, it should be at once referred to the convening authority for decision.

642. Officers junior in rank to candidate shall not be questioned as to matters of opinion.—No inquiry as to matter of opinion shall be put to any officer who is junior in rank to the candidate for promotion.

THE FINDING AND RECOMMENDATION OF THE BOARD.

643. Rule governing board's recommendation.—It shall be held obligatory upon any member of the board to decline to recommend the promotion of any officer until he is satisfied of the officer's entire mental, moral, and professional fitness for promotion. (See sec. 620.) The board, while careful not to do injustice to any officer regarding whom there is any doubt, shall take equal care to safeguard the honor and dignity of the service, recommending no officer for promotion as to whose fitness a doubt exists. (*See* C. M. O. 13, 1916,

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6–7.) In case of dissent the majority report becomes the report of the board. (See sec. 650.)

644. Form of recommendation prescribed by law.—A naval examining board, when it decides to so recommend, "shall report their recommendation of any officer for promotion in the following form: 'We hereby certify that ——— ——— has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea or on shore, of the grade [rank] to which he is to be promoted [, to wit ———,] and recommend him for promotion.'" (R. S., 1504.) In the case of a candidate for appointment the board must certify that he has the required qualifications for admission and recommend him for appointment.

645. Board must state the cause of a candidate's failure.—Whenever the board fails to recommend a candidate for admission or promotion, it must state on the record whether such failure is owing to his mental, moral, or professional unfitness, or, in the case of candidates for the Pay Corps, his mental, moral, or physical unfitness. (See sec. 617.) When the unfitness of a candidate for promotion is "by reason of drunkenness, or from other cause arising from his own misconduct," the record must so state and must also show that the candidate was "informed of and heard upon the charges against him." (See sec. 656.)

THE RECORD.

646. Date of the proceedings.—The date of the record is that of the day when the board reaches its finding and makes its recommendation. The date of meeting and subsequent intermediate dates are appropriately referred to in the proceedings. The date on cover sheet is in accordance with section 85.

647. Entry in record of statement of candidate and testimony of witnesses.—The statement of the officer undergoing examination, if any such statement be made, all questions propounded to him and his answers thereto, with the testimony of all witnesses, shall be entered in the record of proceedings.

648. In the case of a line officer above the grade of lieutenant.—The examining board will ascertain and state in the record whether or not the candidate has taken any course of instruction at the Naval War College, and, if so, for what period of time and to what extent he took advantage of his opportunities.

649. Record must show specifically that unfavorable evidence was considered.—When there is evidence of an unfavorable nature, the record must show affirmatively that the board fully considered this unfavorable evidence. It is not sufficient to set forth in general terms that unfavorable matter was considered, but the specific unfavorable

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report or other matter must be set forth in full, together with the reasons that guided the board in its recommendation.

650. Authentication and transmission of the record.—The record of proceedings shall be signed by all the members and the recorder and be transmitted, together with all reports of qualifications and other documentary evidence which has been before the board, to the convening authority, who, after acting upon same, shall transmit it to the Judge Advocate General. If the board has been convened by the department the record shall be forwarded direct to the Judge Advocate General. In case of dissent the record must show those of the members who concurred in, and those who dissented from, the opinion of the board, with the reasons for dissent.

651. Copies of orders, etc., certified.—A copy of the precept and of every order or notice addressed to the board or to the candidate, certified by the recorder, must be prefixed to the record of proceedings in the case, and each exhibit, of whatever nature, must be separately designated as prescribed in section 84.

652. Making up the record.—Reports of fitness, answers to interrogatories, commendatory letters, letters relating to indebtedness, etc., shall be appended to the record, all papers of each class together and arranged in chronological order. For general instructions in regard to making up the record see Chapter VII.

REVISION.

653. The record of an examining board may be returned to the board for revision in any particular which the convening authority may deem necessary.

FINAL ACTION.

654. "Any matter on the files and records of the Navy Department, touching each case, which may, in the opinion of the board, be necessary to assist them in making up their judgment, shall, together with the whole record and finding, be presented to the President for his approval or disapproval of the finding." (R. S., 1502.)

But the act of May 22, 1917, provides:

"That the President be, and he is hereby, authorized to direct the Secretary of the Navy to take such action on the records of proceedings of naval examining boards and boards of naval surgeons for the promotion of officers of the Navy as is now required by law to be taken by the President."

655. In case of professional failure.—"Any officer of the Navy on the active list below the rank of commander who, upon examination for promotion, is found not professionally qualified, shall be suspended from promotion for a period of six months from the date of approval of said examination, and shall suffer a loss of numbers

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equal to the average six months' rate of promotion to the grade for which said officer is undergoing examination for the five fiscal years next preceding the date of approval of said examination, and upon the termination of said suspension from promotion he shall be reexamined, and in the case of his failure upon such reexamination he shall be dropped from the service with not more than one year's pay." (R. S., 1505, as amended by act of Mar. 11, 1912, 37 Stat., 73.)

656. When found disqualified by reason of drunkenness or misconduct.—"Whenever on an inquiry had pursuant to law, concerning the fitness of an officer of the Navy for promotion, it shall appear that such officer is unfit to perform at sea the duties of the place to which it is proposed to promote him, by reason of drunkenness, or from any cause arising from his own misconduct, and having been informed of and heard upon the charges against him, he shall not be placed on the retired list of the Navy, and if the finding of the board be approved by the President, he shall be discharged with not more than one year's pay." (22 Stat., 286.) (See sec. 645.)

SUPERVISORY BOARDS.

657. When ordered.—In certain cases, where deemed desirable, a supervisory board may be appointed to supervise the written professional examination, preliminary to promotion, of such officers as may be ordered to report for such examination and as may waive their rights to appear in person before a statutory board, provided such officer has been notified of the time and place of meeting of the latter board.

658. Constitution.—Such board shall consist of three officers. Officers junior to the officer to be examined may be designated as members of a supervisory board when the exigencies of the service so require. A separate recorder may or may not be detailed. (See secs. 563 and 564.)

659. How convened.—The Secretary of the Navy, or other duly authorized convening authority of naval examining boards, may direct any commanding officer under his command to appoint such supervisory board.

660. Oaths—Not administered.—Neither the members nor the recorder of a supervisory board are sworn, but the waiver must be sworn to before the president of such board.

661. Procedure.—A supervisory board need not keep a record of its daily proceedings; but such proceedings shall be conducted in accordance with the procedure laid down for naval examining boards in so far as applicable.

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The board will ask each candidate if he has any objection to the statutory naval examining board, which will be ordered to conduct his examination and to make final recommendation upon his case. If the candidate has no such objection, he will be permitted to waive his right to appear in person before the statutory board, as conferred by section 1500 of the Revised Statutes (see sec. 622), and, after the candidate has signed such waiver and sworn to same (see sec. 660), the supervisory board will proceed with the prescribed examination. (For form of waiver see p. 447.)

662. Report of the board.—Upon the completion of the examination, a certificate signed by each member of the board will be attached to the papers in each case, stating whether or not the candidate has any objection to his examination for promotion being conducted by the statutory naval examining board, and that he has received no outside assistance during its progress. (For form of certificate see p. 447.)

The waiver of the candidate of his right to appear in person, together with the examination papers of the candidate and the foregoing certificate of the board, will be forwarded by the supervisory board to the president of the statutory board which will finally pass upon the case.

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XIX.

BOARDS OF MEDICAL EXAMINERS.

(R. S., 1493–1494.)

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663. Physical examination before promotion.—"No officer shall be promoted to a higher grade on the active list of the Navy, except in the case provided in the next section, until he has been examined by a board of naval surgeons and pronounced physically qualified to perform all his duties at sea." (R. S., 1493.)

664. Physical disability due to wounds.—"The provisions of the preceding section shall not exclude from the promotion to which he would otherwise be regularly entitled any officer in whose case such medical board may report that his physical disqualification was occasioned by wounds received in the line of his duty, and that such wounds do not incapacitate him for other duties in the grade to which he shall be promoted." (R. S., 1494.)

665. Composition of board for examination for promotion.—In interpreting the above-quoted statute (sec. 663), it is held that the wording "a board of naval surgeons" means that a board of two medical officers—or more—of the Navy is empowered to act, in the case of examination of officers for promotion. (File 26521–30.) (See secs. 563, 564 as to recorder.)

666. Convening authority.—See section 615. The Secretary of the Navy, or other duly authorized convening authority of a board of medical examiners, may forward to any commanding officer under his command a precept signed in blank and direct such commanding officer to fill in the names of medical officers available to serve on such board and the date and place of meeting, and after countersigning to forward same to such officer as he may name as president.

667. Physical examination of candidates for appointment.—This examination, like the examination (physical) for promotion, shall precede the mental and the professional; and if the candidate be found physically unfit, he shall not be examined otherwise. (See sec. 629.)

Under special circumstances, in the case of candidates for appointment, it is proper for the board of medical examiners to certify that a slight physical defect is not sufficient to disqualify, and to recommend a candidate for appointment provided the department should see fit to waive certain minor disqualifications (such as slightly under standard weight or standard height). In making such recommendations, boards of medical examiners shall take every precaution to safeguard the best interests of the service. It is in-

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tended that use shall be made of such recommendations only when a candidate has a very slight physical defect or varies slightly from the physical standard, and possesses mental or professional qualifications for such appointment that are notably higher than the average.

668. Composition of board for examination for appointment.—When the candidate is one for appointment as an acting assistant surgeon, or as assistant surgeon in the Medical Reserve Corps or in the Dental Reserve Corps, *in cases of necessity*, the physical examination may be conducted by a single medical officer known as a medical examiner. In other cases the physical examination of candidates for appointment shall be conducted by a board constituted similarly to the board for the physical examination of candidates for promotion. (See sec. 665.)

669. Procedure and oaths.—As to the organization of the board and oaths to members and recorder, see procedure and oaths under naval examining boards. (Secs. 631, 636, and 637.)

670. Record must show what examination was made.—Each record must state fully what physical examination of the candidate was made, and by whom.

671. In case of candidate for promotion—what considered.—The physical examination of a candidate for promotion shall relate only to his qualifications to perform the duties of the grade to which he seeks promotion, and not to those of any other grade. The medical history of such candidate since the date of his last examination for promotion shall be considered in connection with his physical examination.

672. Certificate of candidate as to his physical qualifications.—There must, in every case, be appended to the record a certificate, signed by the candidate, stating his physical qualifications. This certificate must be sworn to by a candidate for admission but not by a candidate for promotion. In the case of a candidate for admission this certificate must state also the time and place of birth and legal residence, and whether a native-born or naturalized citizen. If the latter, proof of citizenship must be established. (For form see p. 454.)

The above certificate is not a mere matter of form, and, regardless of whether an officer has been doing duty or not, it is intended to be the candidate's statement of his belief that he has no physical ailment whatever of any kind, or only such as set forth in his statement. The onus of establishing physical fitness for promotion is on the candidate, and it is in view of this principle that the certificate is required.

673. Finding and recommendation of the board.—The record must in each case show the finding of the board as to the physical qualifications of the candidate, and whether it recommends him for admission or promotion, as the case may be, or such other recommendation as the board may deem proper. As to recommending the waiver of slight defects in the cases of candidates for admission, see section

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667. As to cases of candidates for promotion found physically disqualified, see section 674.

674. In case of physical failure of a candidate for promotion.—"If any officer of the Navy shall fail in his physical examination for promotion and be found incapacitated for service by reason of physical disability contracted in the line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted." (36 Stat., 1267.) If, in accordance with the above provision, a candidate for promotion is found "incapacitated for service by reason of physical disability contracted *in the line of duty*," the board of medical examiners shall so state in their findings. Attention is called to the fact that an officer so incapacitated for service can not, when ordered before a retiring board, benefit by the provisions of the above-mentioned act, unless the board of medical examiners has specifically stated in its finding that the physical disability was contracted *in the line of duty;* care should therefore be taken that these words are included in the finding in all cases where applicable. (See sec. 694.)

675. In case of physical disability not in the line of duty.—In case the board finds that the disability of an officer appearing before it was not received in the line of duty, it shall be the duty of the president of the board to so inform such officer.

676. The record.—The record is made up, authenticated, and transmitted in accordance with the instructions laid down for naval examining boards. (See secs. 646, 650–652.) But in the case of candidates for appointment to the Pay Corps, the board of medical officers shall transmit their report to the examining board of pay officers. (See sec. 617.)

677. Revision.—See section 653, under naval examining boards, which applies to boards of medical examiners.

678. Final action.—See sections 654 and 674.

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XX.

NAVAL RETIRING BOARDS.

(R. S. 1443 to 1465.)

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NAVAL RETIRING BOARDS.

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WHEN ORDERED.

679. When ordered.—"Whenever any officer, on being ordered to perform the duties appropriate to his commission, reports himself unable to comply with such order, or whenever, in the judgment of the President, an officer is incapacitated to perform the duties of his office, the President, at his discretion, may direct the Secretary of the Navy to refer the case of such officer to a board of not more than nine nor less than five commissioned officers, two-fifths of whom shall be members of the Medical Corps of the Navy. Said board, except the officers taken from the Medical Corps, shall be composed, as far as may be, of seniors in rank to the officer whose disability is inquired of." (R. S., 1448.)

When any officer on the active list becomes physically incapacitated to perform the duties of his office, and the probable future duration of such incapacity is permanent or indefinite, he will immediately be ordered before a retiring board, and, pending final action upon the question of his retirement, will not be examined for promotion. The foregoing shall not apply to the case of an officer whose physical incapacity develops after he has become due for promotion, and who may, under such circumstances, be examined physically by a board of medical examiners before being ordered before a retiring board.

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CONVENING AUTHORITY.

680. Convening authority.—See section 615.

CONSTITUTION.

681. See section 679. The provision of the statute as to the rank of the members is directory only, and the decision of the convening authority, as evidenced by the selection of the members of the board, is conclusive.

682. The recorder.—See sections 563 and 564.

THE RIGHTS OF THE OFFICER BEFORE THE BOARD.

683. His right to a hearing.—"No officer of the Navy shall be retired from active service, or wholly retired from the service, without a full and fair hearing before such Navy retiring board, if he shall demand it, except in cases where he may be retired by the President at his own request, or on account of age or length of service, or on account of failure to be recommended by an examining board for promotion." (R. S., 1455.)

684. Interpretation of the above statute.—This entitles an officer subject to retirement, and not within the exceptions stated, to appear before the board, with counsel, if desired, to introduce testimony of his own, to cross-examine the witnesses examined by the board, including the medical members of the board who may have taken part in the medical examination, and have stated or reported to the board the result of the same. He may also submit a statement to the board if he so desires, or take the stand as a witness (see sec. 623), or such officer may be called as a witness by the board. (C. M. O. 29, 1915, 6.) If such officer fails to appear before the board when ordered, he waives the right to a hearing, and can not properly take exception to a conclusion arrived at in his absence.

685. Challenge.—The statutory right to a "fair hearing" includes the right to a hearing by an impartial board, and therefore the right to challenge for cause.

OATHS.

686. It is provided by statute that members of a naval retiring board "shall be sworn in each case to discharge their duties honestly and impartially." (R. S., 1450.)

687. To members.—The recorder administers the following oath to each of the members:

"You, A— B—, C— D—, etc., and each of you solemnly swear (*or* affirm) that you will honestly and impartially examine and report

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upon the case of ——— ———, U. S. Navy, now before the board and about to be examined."

688. To recorder.—The president administers the following oath to the recorder.

"You, A— B—, do solemnly swear (*or* affirm) that you will keep a true record of the proceedings of this board in the case of ——— ———, now before the board and about to be examined."

689. To witnesses.—The following oath shall be administered to witnesses by the president of the board:

"You, A— B—, do solemnly swear (*or* affirm) that you will make true answers to such questions as may be put to you in the case of ——— ———, now under examination by this board."

POWERS OF THE BOARD; THE PROCEDURE.

690. Authority of retiring board.—"Said retiring board shall be authorized to inquire into and determine the facts touching the nature and occasion of the disability of any such officer, and shall have such powers of a court-martial and of a court of inquiry as may be necessary." (R. S., 1449.)

691. Powers of board.—In the execution of the duty thus imposed by law, the board is required to ascertain the nature and occasion of the disability and its character and effect, as temporary or permanent. The investigation of a retiring board is not restricted by any statute of limitation. It may inquire into the matter of a disability, however long since it may have originated. In accordance with the above-quoted statute, the board shall have and exercise such powers of a court-martial and of a court of inquiry as may be necessary to determine the facts and reach a conclusion in the matter before it.

692. Procedure.—In general, the procedure, after the board and the recorder have been sworn, is as follows:

All papers having any bearing on the physical or mental condition of the officer are read. The president of the board then directs the medical members to examine into the past and present physical and mental condition of the officer under examination. After such examination, the medical members shall report whether, in their opinion, the officer is or is not incapacitated for active service in the Navy, and whether his incapacity is or is not the result of an incident of the service. This preliminary report shall be made orally to the board.

Thereupon the officer is asked whether he desires to question the medical members, to rebut their evidence, or to make a statement.

After the officer before the board has submitted his evidence, or declared that he has nothing to offer, he shall be discharged from further attendance before the board. But care shall be taken not to

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discharge an officer under examination until his case is fully completed.

The medical members shall then submit a written report to the board, under oath, certifying as to the past and present physical and mental condition of the officer, stating the reasons that led them to their conclusion.

THE FINDING.

693. "When said retiring board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, produced his incapacity, and whether such cause is an incident of the service." (R. S., 1451.)

694. Retirement of officer failing physically for promotion.—The act of March 4, 1911 (36 Stat., 1267), provides as follows: "Hereafter, if any officer of the United States Navy shall fail in his physical examination for promotion and be found incapacitated for service by reason of physical disability contracted in the line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted." Accordingly, when an officer has been found by a board of medical examiners to be not physically qualified for promotion, *by reason of physical disability contracted in the line of duty* (see sec. 674), and such finding has been approved, and the said officer is then ordered before a retiring board, the latter board, in its finding, shall specifically state whether or not the physical disability was contracted in the line of duty; and the words *line of duty*, in all such cases, must be set forth in the finding in order that the officer may fall under the provisions of the above-quoted act.

695. "Line of duty" and "Incident of the service."—The phrase "line of duty," as used in the act of March 4, 1911 (sec. 694), should be construed as having the same meaning with "incident of the service," as used in section 1451 of the Revised Statutes (sec. 693). As to what constitutes same see sections 609–612.

696. How determined.—Courts of law are guided by the axiom that an accused is innocent until he is proved guilty. It does not, however, follow that, in the case of a retiring board, a physical defect is assumed to have resulted in line of duty until the Government has proved the contrary. By statute, the retiring board is sworn to discharge its duties honestly and impartially; it is authorized to inquire into and determine facts touching the nature and occasion of disability; and upon it are conferred the powers of a court-martial and court of inquiry. When it finds incapacity, it shall also find and report the cause which, *in its judgment*, produced incapacity, and whether such cause is an incident of the service. (R. S., 1449–1451.) All questions relating to the physical condition of an officer

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shall be determined by the full board on all the facts. In case of dissent the majority report becomes the report of the board.

697. In case of physical disability not in the line of duty.—In case the board finds that the disability of an officer appearing before it was not received in the line of duty, it shall be the duty of the president to so inform such officer.

After a retiring board has decided that *prima facie* the incapacity of an officer is the result of his own misconduct and has afforded such officer an opportunity to be heard, it may thereupon, according to the evidence, either adhere to or change its *prima facie* finding.

RECORD.

698. The record is made up, authenticated, and transmitted in accordance with the instructions laid down for naval examining boards. (See secs. 646, 650–652.)

REVISION.

699. In any case in which the convening authority deems necessary he may return the record to the board for a correction of its proceedings, or for a further inquiry or hearing and reconsideration of its conclusions, as in the case of a court-martial. As the proceedings of a retiring board are not a trial, the board upon revision may receive new evidence.

FINAL ACTION.

700. "A record of the proceedings and decision of the board in each case shall be transmitted to the Secretary of the Navy, and shall be laid by him before the President for his approval, disapproval, or orders in the case." (R. S., 1452.)

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XXI.

MARINE EXAMINING BOARDS.

(R. S. 1493 and 1494.)
(26 Stat., 562.)
(27 Stat., 321.)
(30 Stat., 1009.)
(39 Stat., 183.)
(39 Stat., 611.)

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CONVENING AUTHORITY.

701. Convening authority.—See section 615.

CONSTITUTION.

702. Constitution.—"Hereafter promotions to every grade of commissioned officers in the Marine Corps below the grade of commandant shall be made in the same manner and under the same conditions as now are or may hereafter be prescribed, in pursuance of law, for commissioned officers of the Army: *Provided*, That examining boards which may be organized under the provisions of this act to determine the fitness of officers of the Marine Corps for promotion shall in all cases consist of not less than five officers, three of whom shall, if practicable, be officers of the Marine Corps, senior to the officer to be examined, and two of whom shall be medical officers of the Navy: *Provided further*, That when not practicable to detail officers of the Marine Corps as members of such examining boards, officers of the line in the Navy shall be so detailed." (27 Stat., 321.)

703. Medical members.—The medical officers shall take part only in the mental and physical examination of the candidate for promotion. (See sec. 716.)

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704. Recorder. (See sections 563 and 564.)

PRECEPT.

705. The precept shall state the time and place of meeting and name the membership of the board. It may contain, be accompanied by, or refer to special instructions relative to the conduct of the examinations. In the absence of such the instructions hereinafter set forth control.

CANDIDATE.

706. See sections 620–628, under naval examining boards, which apply.

PROCEDURE.

707. See sections 631–635, under naval examining boards, which apply to marine examining boards.

OATHS.

708. Oath administered by president to recorder.—"You, A— B—, do solemnly swear (*or* affirm) that you will keep a true record of the proceedings of this board in the case of ——— ———, now before the board and about to be examined."

709. Oath administered by recorder to members.—"You, A— B—, C— D—, E— F—, and each of you solemnly swear (*or* affirm) that you will honestly and impartially examine and report upon the case of ——— ———, now before the board and about to be examined."

710. Oath administered by president to witnesses.—Witnesses before testifying shall be sworn by the president of the board, as follows: "You, A— B—, do solemnly swear (*or* affirm) that you will make true answer to such questions as may be put to you in the case of ——— ———, now under examination by the board."

WITNESSES.

711. See sections 639–642, under naval examining boards, which apply except that inquiries to officers regarding a candidate's fitness for promotion are addressed by the Commandant of the Marine Corps instead of the Bureau of Navigation.

FORM OF EXAMINATION.

712. Of what examination shall consist.—When the candidate holds the rank of lieutenant colonel or below, the board shall examine and report upon (1) his mental and physical, (2) his moral, and (3) his

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professional fitness for promotion, provided that "examinations of officers in the grades of major and lieutenant colonel shall be confined to problems involving the higher functions of staff duties and command." (39 Stat., 183.) When the candidate holds the rank of colonel, he shall be subject only to "physical, mental, and moral examination." (Act of Mar. 3, 1899 (30 Stat., 1009), as affected by act of June 3, 1916 (39 Stat., 183).)

Physical and Mental Fitness.

713. Medical report.—The medical members shall meet as a board of medical examiners (see secs. 744 and 745) and shall thoroughly examine the candidate as to his physical qualifications for promotion. They shall report in writing to the full board their opinion as to the candidate's physical fitness for promotion, and, in case they find him unfit, they shall state the particular causes therefor, and whether or not, in their opinion, the disability was contracted in line of duty. This report shall be signed by the medical members and appended to the record.

714. Mental fitness.—The mental fitness shall be assumed unless a doubt thereof shall be raised in the mind of any member of the board.

715. Medical record to be read aloud.—The medical record of the candidate since his last examination upon which he was promoted, as furnished by the Navy Department, and other documents pertaining to his physical fitness, including any pertinent extracts from the military history, reports on fitness, interrogatories, etc., shall be read aloud and appended to the record. In case of entries indicating unfitness, the matter shall be investigated by the board.

716. The mental and physical fitness to be decided by the entire board.—The mental and physical fitness of the candidate and all questions which arise in connection therewith shall be voted upon by each member of the entire board, and the votes of a majority shall decide, except that the candidate may not be promoted unless found physically qualified by the board of medical examiners. (See sec. 744.) When the board finds the candidate mentally and physically qualified for promotion, the medical officers shall be excused from further attendance with the board and the remaining parts of the examination shall be conducted by the other members of the board.

717. Defects of vision.—Defects of vision that may be entirely corrected by glasses do not disqualify for promotion, unless they are due to organic disease.

718. Procedure on physical disqualification.—When the board decides that the candidate is physically disqualified for promotion, the examination as to his other qualifications shall not be held, but the

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board shall examine and report in full, according to the procedure of a marine retiring board, upon the cause which, in its judgment, produced the disability, and whether or not such disability was contracted in the line of duty. (See Chap. XXII.) If the complete medical record of the candidate is desired by the board to assist it in arriving at its finding, this fact will be communicated by telegraph or otherwise to the Commandant of the Marine Corps, and the board will adjourn to await its receipt.

Moral Fitness.

719. Moral fitness.—The moral fitness of the candidate shall be assumed, unless a doubt shall be raised by evidence of record or from the general reputation of the candidate. In case such a doubt should arise, it is not incumbent upon the Government to prove culpability, but the onus of dispelling such a doubt is upon the candidate.

720. In case the moral fitness of the candidate is not assumed.—If the moral fitness of the candidate is not assumed, he shall be furnished full information as to any allegations concerning his moral conduct, names of accusers and witnesses, and documentary evidence against him. He shall be allowed to examine such witnesses and evidence and to testify and introduce evidence in its own behalf. (See sec. 711 and secs. 639–642 as to summoning witnesses in this connection.) The candidate shall be given an opportunity to make a statement with reference to his moral fitness. This statement, if made, shall be appended to the record. (But see sec. 623.)

721. The board is not to consider any fact which occurred prior to the last examination of the candidate whereby he was promoted.—See section 632.

The Professional Examination.

722. The professional examination to be oral and practical.—Examinations in professional subjects shall be oral and practical. When a candidate has been found unsatisfactory in any subject on oral examination, written examination in such subject shall be proceeded with immediately following the oral examination. In case of failure upon practical examination in any subject, the board shall conduct a second practical test of sufficient scope to determine beyond doubt the actual degree of efficiency of the candidate in that subject.

723. Presence of members during examination.—During the oral and practical examinations all the members, except the medical members, shall be present. Written examinations, when necessary, may be conducted in the presence of one member of the board, for which purpose the board may be divided into committees before whom the examinations will be continued from day to day until completed,

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after which the board shall reassemble to determine its findings. In case of the absence of a member or of the recorder, at a time when the full board is in session, the record shall show the reason therefor, and, if the absence is to be more than temporary, the board shall adjourn and the president shall inform the convening authority of the facts.

724. General character of the professional examination.—The examination as to the candidate's professional fitness shall be such as will fully test his knowledge of the general profession of arms, of all the details of the part or parts of his profession in which by reason of his opportunities he should have perfected himself, and of the general principles of all the duties that may devolve upon him by reason of his promotion to the next higher grade. In all examinations the board shall form their opinion of an officer's professional qualifications by comparison of his knowledge with his age, service, and opportunities for acquiring such knowledge. The examination shall be sufficiently comprehensive and exhaustive to determine the degree of proficiency of the candidate in each subject. The use of diagrams and sketches to expedite and elucidate the answers to questions is authorized.

725. Scope of examination.—The board will confine its questions on the oral, written and practical examinations to the latest editions of various professional publications as set forth from time to time in Marine Corps Orders, except when, in the opinion of the board, the candidate for promotion has not had sufficient time properly to prepare himself in the latest edition of any specified publication. In this event, the questions may be based on the preceding edition of the work. Marine Corps orders will, from time to time, prescribe the scope and the various subjects for the examination of officers of the staff departments and of the line, who are candidates for promotion. Officers of the line detailed in the staff departments will be examined in the same subjects as officers of the line not so detailed. Boards will strictly adhere to these prescribed subjects.

726. Troops and material to be furnished.—Commanding officers of posts at or in the vicinity of which boards may be appointed to meet shall furnish, upon request, such available troops and material as may be required by boards for holding practical examinations. In case of unpropitious weather, practical exercises may be postponed from day to day, but shall never be omitted or curtailed.

727. Preparation of questions and marking.—Before beginning the examination in a subject, the board shall prepare such questions, not more than ten, and such practical exercises as it may deem appropriate for testing the candidate's knowledge and ability. As each question is answered, or each exercise completed, each member of the board shall note his estimate of the value of the answer given or

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of the exercise conducted. These estimates shall be made on a scale of 4 to 0, 4 representing perfect, and the average of a member's estimates shall be his mark for the subject. The average of the members' marks shall be the mark of the board in that subject. In case the mark of the board in any subject is less than 3.0, the candidate shall be considered as unsatisfactory in that subject, and the board will proceed with the written examination, or the second practical exercise, as directed in section 722, and the mark attained therein will be the candidate's mark in that subject. No officer will be recommended for promotion who fails to attain a mark of 3.0 in each subject, including general efficiency.

728. Examinations to continue from day to day.—The candidate shall be furnished only such number of questions or be required to conduct such practical exercises as he may be able to answer or complete before a recess or adjournment is taken. Examinations shall continue from day to day, Sundays and holidays excepted, until completed.

729. Officers holding certificates from service schools.—Except that there are no exemptions from examination as to mental, physical, and moral fitness, as to general efficiency, and as to practical drills and exercises involving actual command of troops, where such are prescribed, officers holding certificates from the service schools enumerated below are exempt from examination in the subjects mentioned therein, and officers holding certificates from the Naval War College and Army War College are exempt from all examination, with the exceptions noted above, when the vacancy accrues or the examination is held within the periods subsequent to date of certificate hereinafter prescribed:

(*a*) Marine Officers' School: Passed with distinction, 5 years; passed with credit, 4 years; passed, 3 years.

(*b*) Army School of the Line: Honor graduate, 5 years; distinguished graduate, 4 years; graduate, 3 years.

(*c*) Naval War College: 6 years.

(*d*) Army War College: 6 years.

730. Mark in general efficiency; how determined.—The mark in general efficiency shall be based upon reports of fitness, answers to interrogatories; documentary evidence submitted to the board by the Navy Department, the Commandant of the Marine Corps, or the candidate; and such other relevant evidence as may be submitted by the candidate or obtained by the board on its own initiative. When unsatisfactory, the candidate must be afforded opportunity to be heard thereon.

731. Marks reported.—Marks in each subject shall be reported. In case of an unsatisfactory mark in any subject, oral or practical, it shall be entered *in red ink*, and the mark in the written examination or second practical examination (see sec. 722) shall be entered imme-

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diately thereafter. This second mark, if unsatisfactory, shall also be in red ink.

THE FINDING AND RECOMMENDATION.

732. Rule governing.—See section 643.

733. How expressed.—The finding and recommendation of the board shall state whether or not the candidate is found qualified to perform the duties of the next grade to which he will be eligible under each of the heads enumerated in section 712, and whether or not the board recommends his promotion thereto. It shall also specifically name the grade or, if more than one, grades for promotion to which the candidate has been examined.

734. How signed.—Except as provided in the following section, the finding and recommendation of the board shall be signed by all concurring members, *exclusive of medical members.* Any member, except a medical member, who dissents therefrom shall state his reasons therefor, which reasons shall be entered in the record after the finding of the other members and signed by the dissenting member.

735. In case of physical disqualification.—In case of physical disqualification the procedure outlined in section 718 is followed.

736. Findings and recommendations to be regarded as confidential.—The findings and recommendations of the board shall be regarded by the members and the recorder as confidential until they shall have been made public by the department.

THE RECORD.

737. See sections 646–647 and 649–652, under naval examining boards, which apply to the record of a marine examining board.

738. Candidate's certificates.—The candidate's certificate as to his physical qualifications (see sec. 672, which applies) shall be signed by himself, as of the date of examination. At the conclusion of the examination the candidate shall be called upon to sign and submit a certificate to the effect that he has not received assistance from any unauthorized source. Both of the above certificates shall be appended to the record. (For form see pp. 473–474.)

739. Copies of questions, answers, marks, etc., appended.—There shall be appended to the record in each case a copy of all questions asked and a description of all practical exercises, which will show, in the case of the oral and practical examinations, the marks assigned by the individual members of the board and the marks assigned by the board as a whole to each. In the case of a written examination, each question shall be attached to the record together with the answers thereto written by the candidate.

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REVISION.

740. See section 653, under naval examining boards, which applies.

FINAL ACTION.

741. Marine examining boards, being governed by the laws relating to promotion in the Army (see sec. 702), do not require the action of the President, but may be finally acted upon by the Secretary of the Navy.

742. **In case of an officer found "unfit for promotion."**—"* * * if any officer fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion. *And provided*, That should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for one year, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged with one year's pay from the Army * * *" (26 Stat., 562, act regulating promotions in the Army, applicable to the Marine Corps).

743. **In case of professional failure.**—"In lieu of suspension from promotion of any officer of the Marine Corps who hereafter fails to pass a satisfactory professional examination for promotion, or who is now under suspension from promotion by reason of such failure, such officer shall suffer loss of numbers, upon approval of the recommendation of the examining board, in the respective ranks, as follows: Lieutenant colonel, one; major, two; captain, three; first lieutenant, five; second lieutenant, eight: *Provided*, That any such officer shall be reexamined as soon as may be expedient after the expiration of six months if he in the meantime again becomes due for promotion, and if he does not in the meantime again become due for promotion he shall be reexamined at such time anterior to again becoming due for promotion as may be for the best interest of the service: *Provided further*, That if any such officer fails to pass a satisfactory professional reexamination he shall be honorably discharged with one year's pay from the Marine Corps." (39 Stat., 611.)

BOARD OF MEDICAL EXAMINERS.

744. **R. S. 1493 and 1494 apply to Marine Corps.**—"The provisions of sections fourteen hundred and ninety-three and fourteen hundred and ninety-four of the Revised Statutes of the United States shall apply to the Marine Corps." (39 Stat., 611.) R. S. 1493 and 1494 are quoted in sections 663 and 664.

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745. Board of medical examiners necessary.—The above statute makes necessary, in the case of candidates for promotion in the Marine Corps, an examination by a board of medical examiners as well as by a marine examining board. For procedure of a board of medical examiners see Chapter XIX. The board of medical examiners may consist of the medical members of the marine examining board but must meet as a separate board and make a separate report, which will be appended to the report of the marine examining board.

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XXII.

MARINE RETIRING BOARDS.

(R. S. 1622–1623; 1245–1253.)

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MARINE RETIRING BOARDS.

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WHEN ORDERED.

746. "When any officer has become incapable of performing the duties of his office, he shall be either retired from active service, or wholly retired from the service, by the President, as hereinafter provided." (R. S., 1245.)

When any officer on the active list becomes physically incapacitated to perform the duties of his office, and the probable duration of such incapacity is permanent or indefinite, he will immediately be ordered before a retiring board, and, pending final action upon the question of his retirement, will not be examined for promotion. But when an officer's physical incapacity develops after he has become due for promotion, the provisions of section 718 apply.

CONVENING AUTHORITY.

747. See section 615.

CONSTITUTION.

748. "The commissioned officers of the Marine Corps shall be retired in like cases, in the same manner, and with the same relative conditions, in all respects, as are provided for officers of the Army, except as is provided in the next section." (R. S., 1622.)

749. Composition of board.—"In the case of an officer of the Marine Corps, the retiring board shall be selected by the Secretary of the Navy, under the direction of the President. Two-fifths of the board

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shall be selected from the Medical Corps of the Navy, and the remainder shall be selected from officers of the Marine Corps, senior in rank, so far as may be, to the officer whose disability is to be inquired of." (R. S., 1623.)

750. Number on board.—A retiring board shall consist "of not more than nine nor less than five officers." (R. S., 1246.)

751. Rank of members.—The provision of the statute as to the rank of the members is directory only, and the decision of the convening authority, as evidenced by the selection of the members of the board, is conclusive.

752. The recorder.—See sections 563 and 564.

The Rights of the Officers Before the Board.

753. Officers entitled to a hearing.—"Except in cases where an officer may be retired by the President upon his own application, or by reason of his having served forty-five years, or of his being sixty-two years old, no officer shall be retired from active service, nor shall an officer, in any case, be wholly retired from the service, without a full and fair hearing before an Army retiring board, if, upon due summons, he demands it." (R. S., 1253.)

754. Interpretation of the above statute.—See section 684.

755. Challenge. See section 685.

Oaths.

756. It is provided by statute that the members of a retiring board "shall be sworn in every case to discharge their duties honestly and impartially." (R. S., 1247.)

757. To the members.—The recorder of the board administers the following oath to each of the members:

"You, A—— B——, C—— D——, etc., and each of you, solemnly swear (*or* affirm) that you will honestly and impartially examine and report upon the case of ——— ———, U. S. Marine Corps, now before the board and about to be examined."

758. To the recorder.—The president of the board then administers the following oath to the recorder:

"You, A—— B——, do solemnly swear (*or* affirm) that you will keep a true record of the proceedings of this board in the case of ——— ———, now before the board and about to be examined."

759. To witnesses.—The president of the board shall administer the following oath to witnesses:

"You, A—— B——, do solemnly swear (or affirm) that you will make true answers to such questions as may be put to you in the case of ——— ———, now under examination by this board."

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POWERS OF THE BOARD—THE PROCEDURE.

760. Authority of retiring board.—"A retiring board may inquire into and determine the facts touching the nature and occasion of the disability of any officer who appears to be incapable of performing the duties of his office, and shall have such powers of a court-martial and of a court of inquiry as may be necessary for that purpose." (R. S., 1248.)

761. Powers.—See section 691.

762. Papers bearing on physical condition read.—After the board and the recorder have been sworn, all papers having any bearing on the physical condition of the officer under examination shall be read. The medical officers are then directed to examine into the past and present physical condition of the officer before the board.

763. Inquiry to be made as to whether the officer does or does not desire retirement.—The officer before the board is then asked whether he desires to be retired. If he replies in the affirmative, he shall be sworn as a witness and state under oath the nature and cause of his disability. The recorder or the board will ask such questions as will help to bring out the facts. He may also be interrogated as to his military history, if it be deemed desirable to do so. If the officer does not desire to be retired, his examination, and that of any witnesses he may wish to call, shall be postponed until after the medical members have been examined. (*See* C. M. O. 29, 1915, 6.)

764. Report of medical officers.—The senior medical officer of the board is the next witness. He is called on to submit the result (reduced to writing and signed by the medical officers) of the medical examination of the officer before the board, and he is interrogated as to the cause and permanency of the disability and the degree of incapacity for active service. The other medical officer(s) is (are) similarly examined.

765. Extent of the inquiry.—See section 684.

THE FINDING.

766. Retiring board must state whether incapacity is incident of service.—"When the board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, has produced his incapacity, and whether such cause is an incident of service." (R. S., 1249.) See, in this connection, sections 695, 696, and 742.

RECORD.

767. As to making up, authenticating, and transmitting the record, see sections 646 and 650–652.

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REVISION.

768. See section 699.

FINAL ACTION.

769. The proceedings and decision of the board shall be laid before the President for his approval or disapproval and orders in the case. (R. S., 1250.)

770. When the incapacity is a result of an incident of service.—"When a retiring board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of service, and such decision is approved by the President, said officer shall be retired from active service and placed on the list of retired officers." (R. S., 1251.) See, in this connection, section 742.

771. When the incapacity is not the result of an incident of service.—"When the board finds that an officer is incapacitated for active service, and that his incapacity is not the result of any incident of service, and its decision is approved by the President, the officer shall be retired from active service, or wholly retired from the service, as the President may determine." (R. S., 1252.)

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PART II.

PROCEDURE FOR COURTS AND BOARDS IN THE NAVY.

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I.

GENERAL COURTS MARTIAL.

(Chapter IX.—Part I.)

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INCIDENTS OF A TRIAL BY GENERAL COURT-MARTIAL.

1. Court meets.
2. Provost marshal reports.
3. Stenographer (clerk) introduced.
4. Accused introduced.
5. Accused signifies wishes as to counsel.
6. Counsel, if any, introduced.
7. Precept and other documents relating to organization read by judge advocate.
8. Challenge of members.
9. Judge advocate sworn by president.
10. Members sworn by judge advocate.
11. Stenographer (clerk) sworn by judge advocate.
12. Has accused received copy of charges and specifications? If so, when?
13. Form of charges and specifications considered and pronounced correct (or as the case may be).
14. Accused asked if he is ready for trial.
15. All witnesses not otherwise connected with the trial directed to withdraw.
16. Letter containing charges and specifications read.
17. Arraignment.
18. Preliminary motion (if any).
19. Plea to issue.
20. Prosecution begins.
21. Prosecution rests.
22. Defense begins.
23. Defense rests.
24. Rebuttal.
25. Surrebuttal.
26. Statements or arguments.
27. Trial finished.
28. Court cleared for deliberation on finding.
29. Judge advocate recalled to record finding.
30. Judge advocate informs court as to previous convictions.
31. Court opened to receive any record of previous convictions.
32. Court cleared for deliberation on sentence.
33. Judge advocate recalled to record sentence.
34. Adjournment (or court opened to take up next case).

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CASE OF
LIEUTENANT X——— Y. Z———,
U. S. NAVY,
JULY 16, 19—.

85

RECORD OF PROCEEDINGS
OF A
GENERAL COURT MARTIAL
CONVENED AT
THE NAVY YARD, PHILADELPHIA, PA.,
BY ORDER OF
THE SECRETARY OF THE NAVY.

82 to 92.

Var. —.——— convened on board the U. S. S. *Pennsylvania* by order of the commander in chief, U. S. Atlantic Fleet.

218

Var, —.
Letter to commandant, Portsmouth, July —, 19—.
Letter to auditor, July —, 19—.

388

Copy furnished.

Var.—Copy waived.

366 to 369

91

842

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PRECEPT FOR GENERAL COURT MARTIAL.

NAVY DEPARTMENT,
Washington, July —, 19—.

To: Captain A ——— B, C ———, U. S. Navy, navy yard, Philadelphia, Pa., via commandant.

Subject: Precept for a general court-martial.

1. A general court-martial is hereby ordered to convene at the navy yard, Philadelphia, Pa., at 10 o'clock a. m., on Monday, July —, 19—, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court is composed of the following members, any five of whom are empowered to act, viz:

Captain A ——— B, C ———, U. S. Navy.
Commander D ——— E, F ———, U. S. Navy.
Captain G ——— H, I ———, U. S. Marine Corps.
Lieutenant J ——— K, L ———, U. S. Navy.
Lieutenant M ——— N, O ———, U. S. Navy.
First Lieutenant P ——— Q, R ———, U. S. Marine Corps.
Lieutenant (j. g.) S ——— T, U ———, U. S. Navy.

219 to 227

and of First Lieutenant V ——— V, W ———, U. S. Marine Corps, as judge advocate.

251

3. No other officers can be detailed without injury to the service.

4. Detachment of an officer from his ship or station does not of itself relieve him from duty as a member or judge advocate of a court. Specific orders for such relief are necessary.

5. (This employment on shore duty is required by the public interests.) The court is authorized to adjourn over any holiday prescribed by article R-1289. U. S. Navy Regulations, 1913.

In case a new precept is issued to a court already in session, add: You will inform the members and the judge advocate that they will continue on court-martial duty under their previous orders.

———— ————,
Secretary of the Navy.

228 to 231

In case the convening authority derives such authority from the Secretary of the Navy, see p. 367.

FIRST DAY.

NAVY YARD, PHILADELPHIA, PA.,
Var.—U. S. S. "PENNSYLVANIA," off ———,
Thursday, July 16, 19—.

215 to 217

The court met at 10 a. m.

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Present:

Captain A——— B. C———, U. S. Navy;
Commander D——— E. F———, U. S. Navy;
Captain G——— H. I———, U. S. Marine Corps;
Lieutenant J——— K. L———, U. S. Navy;
Lieutenant M——— N. O———, U. S. Navy;
First Lieutenant P——— Q. R———, U. S. Marine Corps; and
Lieutenant (j. g.) S——— T. U———, U. S. Navy, members, and
First Lieutenant V——— V. W———, U. S. Marine Corps, Judge Advocate.

358

First Lieutenant C——— B. A———, U. S. Marine Corps, reported as provost marshal.

274 to 275

The Judge Advocate introduced F——— E. D——— as stenographer (clerk) (interpreter), stating the authority whereby he was appointed as such.

269 to 273

The accused entered and stated that he did not wish counsel.

263 to 264

Var. 1.—.——— entered and requested that Ensign L——— N———, U. S. Navy, act as his counsel. (Ensign N——— entered.)

Var. 2.—The accused was informed that his request to have Ensign L——— N——— act as his counsel was not approved for the reason that (*give reason*); he then requested that Lieutenant O——— P———, U. S. Navy, act as his counsel. *Or*, He thereupon requested that counsel be detailed for him, and the commandant (senior officer present) was requested by the court to detail an officer to act as such.

265 to 268

(*Should the judge advocate require counsel*).

The judge advocate read an order from the convening authority, copy (original) appended, marked "———," detailing Lieutenant B——— B. B———, U. S. Navy, to act as counsel to assist the judge advocate. Lieutenant B——— entered.

Var. —.———, authorizing Mr. A——— A. A———, of the Department of Justice, to act as counsel to assist the judge advocate. Mr. A——— entered.

260 to 262

The judge advocate read the precept (and modifications thereof), copy prefixed, marked "———."

229 to 230

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Var.—In case any member or members are absent add, and the medical certificate (orders detaching, *etc.*), in the case of ———, copy prefixed, marked "———," (*or,* and the letter from ——— explaining his absence, copy prefixed, marked "———").

242 to 247

The accused stated that he did not object to any member.

Var. 1.—**The accused objected to Lieutenant J——— K. L———, U. S. Navy, because (*here state reason*).**

The court was cleared, the challenged member did not wish to make any reply (or replied as follows ———) and withdrew.

(*Should the accused wish to examine the challenged member.*)

Upon request of the accused, the challenged member took the stand and was examined on his *voir dire* as follows:

(*Examination as hereinafter given for the defense.*)

(*Should the accused wish to support his challenge by the evidence of witnesses.*)

———, a witness for the accused, was called and examined on his *voir dire* as follows:

The court was cleared.

The court was opened. All parties to the trial entered; the president announced that the objection of the accused was sustained, and Lieutenant J——— K. L——— was excused from serving as a member in this case (*or,* the president announced that the objection of the accused was not sustained).

The accused did not object to any other member. (*Or,* ——— next objected to ———.)

(*Same procedure as above.*)

Var. 2.—The judge advocate objected to ———. (*Same procedure as in the case of a challenge by the accused, except that examinations are made as hereinafter given for the prosecution.*)

The judge advocate did not object to any other member. (*Or,* ——— next objected to ———.)

Var. 3.—The court, being reduced below the legal quorum, informed the convening authority to that effect, copy of letter appended, marked "———," and then took a recess until 2.30 p. m., the same date, when it reconvened. Present: All the members except Lieutenant J——— K. L———, U. S. Navy, the judge advocate, the accused (counsel), and Lieutenant R——— V. S———, U. S. Navy, appointed a member by the convening authority, vice Lieutenant J——— K. L———, U. S. Navy, relieved. The order so modifying the precept is prefixed, marked "———."

277 to 282

The judge advocate, each (remaining) member, and the stenographer (clerk) (interpreter) were duly sworn.

283 to 290

The accused stated that he had received a copy of the charges and specifications preferred against him on July —, 19—.

232 to 233

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Var. 1.—The judge advocate read a letter from the convening authority, appended, marked "———," authorizing and directing him to make a change (changes) in the specifications, and stated that the same had been made both in the original and in the copy in the possession of the accused.

57

Var. 2.—The judge advocate read a letter from the convening authority, appended, marked "———," directing him to enter a *nolle prosequi* as to the ——— specification of the ——— charge, and a *nolle prosequi* was so entered.

60

The judge advocate asked the accused if he had any objection to make to the charge(s) and specification(s).

235

The accused replied in the negative.

Var. 1.—The accused replied in the affirmative, stating that in the specification(s) he is charged by the name of Henry Johnson, whereas he is now and from earliest childhood has been known by the name of Henry Johnstone, and this he is ready to verify. (*Or as the case may be.*)

Var. 2.—The judge advocate called attention to the fact that (*here state the defect*).

The court was cleared.

258

The court was opened. All parties to the trial entered, and the president announced that the court found the charge(s) and specification(s) in due form and technically correct.

235

Var. 1.——— the president announced that the court, having found the specifications (*or as the case may be*) not in due form, had sent a communication to the convening authority, copy appended, marked "———," and would await a reply. The court then, at — a. m., took a recess (adjourned) until — p. m., the same date (until — a. m., to-morrow, ———), when it reconvened. Present: The members and all parties to the trial.

361

The charges and specifications having been returned to the court, the judge advocate was directed to correct the copy in the hands of the accused to correspond with the charges and specifications just received from the convening authority (with the charges and specifications corrected by direction of the convening authority, copy of letter appended, marked "———").

The judge advocate asked the accused if he had any objection to make to the charges and specifications, as amended (corrected).

The accused replied in the negative. (*Or as the case may be.*)

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The court was cleared.

The court was opened. All parties to the trial entered, and the president announced that the court found the charges and specifications in due form and technically correct.

Var. 2.—The court was opened. All parties to the trial entered, and the president announced that the court would proceed with the trial on the charges and specifications as originally received, copy of letter from the convening authority appended, marked "———."

Var. 3.—The court was opened. All parties to the trial entered, and the president announced that the objection of the accused was overruled, and that the court found the charges and specifications in due form and technically correct.

56

The accused stated that he was ready for trial.

Var.—The judge advocate (accused) requested a postponement of the trial. (*State reason.*)

The court was cleared. The court was opened, and all parties to the trial entered.

The court then, at ——— a. m., adjourned until ——— a. m., to-morrow, Friday. (*Or*, The court was opened. All parties to the trial entered, and the president announced that the court had decided to proceed with the trial.)

291

No witnesses not otherwise connected with the trial were present.

140

Var. 1.—In accordance with the direction of the court, all witnesses not otherwise connected with the trial withdrew.

Var. 2.—The court summoned all the witnesses in the case and instructed them not to converse with any person, other than parties to the trial, concerning any feature of the case whatsoever and not to allow any witness who has testified to communicate in any manner anything to them concerning testimony given on the stand.

177

The judge advocate read the letter containing the charge(s) and specification(s), original prefixed, marked "———," and arraigned the accused as follows:

Q. Lieutenant X——— Y. Z———, U. S. Navy, you have heard the charge(s) and specification(s) of charge(s) preferred against you; how say you to the specification of the (first) charge, guilty or not guilty?

292 to 293

A. Not guilty (guilty) (guilty except to words ———, to which words not guilty). (The accused stood mute.)

Q. To the first charge, guilty or not guilty?

A. * * *.

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Q. To the first specification of the second charge, guilty or not guilty?

A. * * *

Q. To the second specification of the second charge, guilty or not guilty?

A. * * *

Q. To the second charge, guilty or not guilty?

A. * * *.

301 to 310

Var.—Before pleading to the issue the accused (counsel) made a motion to strike out the (first) specification of the (first) charge on the ground that said specification alleges an offense committed more than two years before the issuing of the order for trial, and the accused claims the benefit of the provisions of article 61, A. G. N. (*Or*, state the grounds of such motion, as the case may be, and how much of the charges and specifications it is intended to attack.) In support of his motion the accused desired to call a witness to establish that he did not come within the exceptions stated in article 61, A. G. N. A witness in behalf of the accused entered and was duly sworn. (*Testimony is taken in the manner hereinafter given for the defense; such testimony may be rebutted by the judge advocate.*) (*Or*, the accused stated that he had no evidence to introduce in support of his motion.)

The accused (counsel) made an argument in support of his motion, a brief of which is appended, marked "———."

317

The judge advocate replied (did not desire to reply); (*or*, requested until — p. m., in order to prepare his reply; the court took a recess until — p. m., at which time it reconvened. Present: The members and all parties to the trial. The judge advocate read an argument in reply to the motion of the accused, copy appended, marked "———.")

The court was cleared.

The court was opened, and all parties to the trial entered. The president announced that the court overruled the motion of the accused. The judge advocate asked the accused if he had any further motion to offer. (*If so, same as before.*) The accused replied in the negative and the judge advocate re-arraigned the accused as follows: (*Or*, the president announced that the court decided to sustain the motion of the accused. The president thereupon addressed a communication to the convening authority, copy appended, marked "———," transmitting an extract from the proceedings of the court relative to the motion. Pending a reply from the convening authority, the court then, at — p. m., adjourned until 10 a. m. to-morrow.)

294 to 300

(*When applicable to the plea*).—The accused was duly warned as to the effect of his plea.

The accused persisted in his plea (*or*, withdrew his plea of Guilty and substituted a plea of Not Guilty).

306 to 308

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Var.—(*When applicable to the plea*).—The court was cleared. The court was opened. All parties to the trial entered and the president announced that the court decided to reject the plea of the accused. The accused, by advice of the judge advocate, withdrew his former plea and substituted a plea of Not Guilty. (*Or*, the accused declined to plead as advised by the judge advocate, who was thereupon directed by the court to proceed as though a plea of Not Guilty had been entered.)

310

The prosecution began.

Var.—The prosecution offered no evidence.

205

A witness for the prosecution entered and was duly sworn.

288

Var.—A member (the judge advocate) was called as a witness for the prosecution and duly sworn.

139

Examined by the judge advocate:

141; 142

1. Q. State your name, rank (rate), and present station.

A. *John W. Smith*, coxswain, U. S. Navy, stationed on the U. S. S. *Wyoming*.

Var. (*in case of a civilian witness*):

1. Q. State your name, residence, and occupation.

2. Q. If you recognize the accused, state as whom.

A. * * *.

143

3. Q. * * *.

Var.—This question was objected to by the accused (a member) on the ground (*state reason*).

The judge advocate replied.

317

The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the court sustained (did not sustain) the objection.

149; 150

(*If objection is not sustained*):

3. Q. * * *.

A. * * *.

359; 360

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Cross-examined by the accused (counsel):

151

4. Q. * * *
A. * * *

Reexamined by the judge advocate:

152

37. Q. * * *
A. * * *

Recross-examined by the accused (counsel):

152

45. Q. * * *
A. * * *

Examined by the court:

153

51. Q. * * *
A. * * *

Var. —51. Q. By a member: * * *

This question was objected to by the accused (judge advocate) (member) on the ground (*state reason*).

The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the court sustained (did not sustain) the objection.

(*If the objection is not sustained, the question then becomes a question by the court*).

153

53. Q. * * *
A. * * *

Var.—The judge advocate (counsel for the accused) moved to strike out the answer (words) on the ground (*state reason*).

The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the court sustained (did not sustain) the motion.

(*In case the court sustains the motion:*)

The court directed that the answer (words) be stricken out.

149

Neither the judge advocate, the accused, nor the court desired further to examine this witness.

154

The witness verified his testimony (was duly warned), and withdrew.

175; 177; 140

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Var. 1.——— verified his testimony and resumed his seat as (member) (judge advocate) (president).

139

Var. 2.——— corrected his testimony as follows: Page —, answer to question No. —, the words "——— ———" changed to "——— ———." The testimony, thus amended, was read. The witness pronounced it correct, and withdrew.

Var. 3.—At the request of the judge advocate the witness was directed to report to-morrow at — o'clock, —. m. (*or*, later in the trial, when recalled), to correct or verify his testimony, and withdrew.

175; 176

A witness for the prosecution entered, etc.

The court then, at — a. m., took a recess until — p. m., at which time it reconvened.

361

Present: All the members, the judge advocate, the stenographer, the accused, and his counsel.

———, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

26. Q. * * *

A. * * * (*etc., as before*).

The court then, at — p. m., adjourned until — a. m. to-morrow, Friday (*or, if Saturday, until — a. m. Monday*).

Var.—The judge advocate stated that ——— ———, a material witness, had not appeared and requested the court to adjourn until to-morrow morning. The court then, at — p. m., adjourned until, *etc.*

291

SECOND DAY.

NAVY YARD, PHILADELPHIA, PA.,
Friday, July 17, 19—.

The court met at 10 a. m.

Present: All the members, the judge advocate, the stenographer, the accused, and his counsel.

140

Var. 1.—Present: (*As before*), except Commander D——— E. F———, U. S. Navy, a member; the medical certificate accounting for his absence was read, copy appended, marked "———."

244

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Var. 2.—Present: (*As before*), except Commander D——— E. F———, U. S. Navy, a member. The judge advocate read an order from the convening authority, original prefixed, marked "———," relieving Commander D——— E. F———, U. S. Navy, and appointing Surgeon M——— L. F———, U. S. Navy, as a member of the court.

229; 230

The accused stated that he did not object to this member. (*Should he object, proceed as under challenge.*)

Surgeon M——— L. F———, U. S. Navy, was duly sworn.

No witnesses not otherwise connected with the trial were present.

The record of the proceedings of yesterday was read and approved.

Each witness who had been examined during the absence of Surgeon ——— was called before the court, informed that his oath previously taken was still binding, heard his own testimony read, and Surgeon ——— not desiring to question him, he pronounced his testimony correct and withdrew.

(*Should Surgeon ——— wish to examine the witness, or should any of the parties to the trial wish to question him on any correction he may have made in his testimony, proceed as if he were a new witness about to be examined, and begin numbering of questions anew.*)

247

Var. 3.—Present: (*As before*). Lieutenant J——— K. L———, U. S. Navy, who was absent yesterday when the court was organized stated (*give statement*). The court accepted the explanation and excused Lieutenant ——— from further attendance in the case now pending.

246

Var. 4.—Present: The members and all parties to the trial except the judge advocate; in his absence, the court adjourned until — a. m. to-morrow, Saturday.

257

Var. 5.—(*In case of promotion of member or judge advocate since precept was issued.*)

The judge advocate read a communication, copy appended, marked "———," from the Bureau of Navigation, Navy Department, addressed to Lieutenant Commander J——— K. L———, U. S. Navy, transmitting to him his commission as a lieutenant commander in the Navy.

No witnesses not otherwise connected with the trial were present.

The record of proceedings of yesterday (the first day of the trial) (Saturday) was read and approved.

Var. 1.—The record of proceedings of yesterday was read and objected to by the accused (a member) (the court), inasmuch as. (*State reason.*) The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the court sustained (did not sustain) the objection.

(*If the objection is sustained:*)

The record was corrected so that "———" on page ——— shall read "———."

With this correction, the record was approved.

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Var. 2.—The judge advocate stated that the record of proceedings of yesterday, the ——— day of the trial, was not ready. At the request of the judge advocate, the court then, at — a. m., took a recess until — p. m., at which time it reconvened. (*Or*, the court decided to postpone the reading of this record until such time as it shall be reported ready, and in the meantime to proceed with the trial.)

362

Var. 3.— ——— ———, who had previously testified, was called before the court, informed that his oath previously taken was still binding, and, upon having his testimony read to him, stated that he desired to make the following correction in his testimony. Page ———, answer to question No. ———, line No. ———, strike out the words "———" and insert the words "———."

With this correction, he pronounced the testimony correct and withdrew.

Var. 4.— ——— ———, who had previously testified, was called before the court, informed that his oath previously taken was still binding, and stated that he had read over (*Or*, had had read over to him) the testimony given by him on ———, the ——— day of the trial, pronounced it correct, and withdrew. (*Or*, and stated that he desired to make the following corrections, etc.)

176

(*When a material correction or amendment is made.*)

The witness, at the request of the accused (counsel) (judge advocate), resumed the witness stand, and was informed that his oath previously taken was still binding.

Examined by the accused (counsel):

175

A witness for the prosecution entered (*etc. as before*).

Examined by the judge advocate:

* * * * * * *

5. Q. * * *

The witness declined to answer on the ground that it might tend to incriminate (degrade) him.

159 to 160; 163 to 164.

The judge advocate requested the court to direct the witness to answer.

162

The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the witness need not (must) answer the question.

165

* * * * * * *

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A witness for the prosecution entered, and was objected to by the accused. (*Here give reason.*)

133 to 136

The witness was examined on his *voir dire* as follows:
Examined by the accused (counsel):

137; 289

The court sustained the objection and the witness was excused. (*Or*, the court overruled the objection and the witness was duly sworn (*etc., as before.*)

133

* * * * * * *

3. Q. If you are the legal custodian of the current service record of the accused (*or*, of the official log book of the U. S. S. ———; *or*, the medical journal of the U. S. Naval Hospital at ———, *etc.*), produce it.

The witness produced the current service record of the accused, (*or other document, as the case may be*), and it was submitted to the accused and the court, and by the judge advocate offered in evidence. There being no objection, it was so received.

4. Q. Refer to that record (document) and read such portions thereof as relate to the offense for which the accused is now on trial.

The witness read from the said record (*or other document*) an extract (extracts), copy appended, marked "Exhibit No. —."

186 to 203

Var. 1.—3. Q. I show you a book; can you identify it?
A. I can; it is the official log book of the U. S. S. ———, etc.
Var. 2.—3. Q. I show you a letter; can you identify it?
A. I can.
4. Q. In whose handwriting is it?
A. In that of ———.

146 (c)

Var. 3.—The judge advocate produced an attested copy of a document (letter) (order) (*or*, copy under seal of the Navy Department), the original of which, he informed the court, could not be produced, as it was lost (part of a permanent record) (on official file, *etc.*), and submitted it to the accused and the court, and offered it in evidence, etc.

190

* * * * * * *

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The prosecution rested (*provided the prosecution has offered evidence*).

The defense began.

205

Var.—The defense offered no evidence.

The accused was, at his own request, duly sworn as a witness in his own behalf.

138; 161

Examined by the judge advocate:

143

1. Q. Are you the accused in this case?
A. * * *.

Examined by the accused (counsel).

141

2. Q. * * *.
A. * * *.

Cross-examined by the judge advocate:

151

10. Q. * * *.
A. * * *.

Reexamined by the accused (counsel).

152

17. Q. * * *.
A. * * *.

Recross-examined by the judge advocate:

152

20. Q. * * *.
A. * * *.

Examined by the court:

153

30. Q. * * *.
A. * * *.

Neither the accused (counsel) nor the judge advocate desired further to examine this witness.

154

The witness verified his testimony, and then resumed his status as accused.

175

A witness for the defense entered (*etc., as before*).

Examined by the judge advocate:

143

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1. Q. State your name, rank (rate), and present station.
A. * * *.
2. Q. As whom do you recognize the accused?
A. * * *.
Examined by the accused (counsel):

141

3. Q. * * *

The witness requested permission to refresh his memory from a memorandum.

The request of the witness was granted. Having been allowed to inspect a memorandum, the witness was asked if he could now testify as to his own knowledge. The witness replied in the affirmative and was permitted to continue with his testimony.

Var. —. The witness stated that he could not remember the facts, but that he had made a memorandum at the time of the occurrence which correctly set forth the facts. The accused (counsel) requested that the memorandum be received in evidence, and submitted same to the judge advocate and the court.

Examined by the judge advocate:

4. Q. Under what circumstances was this memorandum made?
A. * * *
5. Q. Can you testify that it was correct when made?
A. * * *

There being no objection, the memorandum was received in evidence, copy appended, marked "Exhibit No. —," and the witness read same.

145

(*In case of improper language or behavior on the part of the witness.*) The president cautioned the witness as to his language (behavior).

171

The witness, having persisted in the use of improper language (*or, as the case may be*), was charged with contempt and, upon being given opportunity to reply, replied (*give reply*).

172

The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the court deemed the witness, E ——— E. F ———, guilty of contempt of court in that he ———. (*Insert the occurrence in full.*)

The court informed the witness that he was at liberty, by such proper statement as he might desire to make, to show cause why he should not be punished for contempt.

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The witness stated:

The witness was placed in the custody of the provost marshal, and the court was cleared. The court was opened. All parties to the trial entered, and the president announced that the court had adjudged the witness guilty of contempt in its presence, and had sentenced him, E ——E. F ——, to ——.

Var,— —— announced that the witness had purged himself of contempt.

The witness continued his testimony:

170; 172

* * * * * * *

The witness verified his testimony and was placed in the custody of the provost marshal, who was directed to deliver him to his commanding officer, —— ——, to whom a communication, copy appended, marked "——," was addressed, announcing the offense and sentence.

173

Var.—(*In the case of a civilian witness*:)

174

22. Q. * * *.

The witness refused to answer this question (*or*, to produce the book, paper, or document referred to, as required by the *subpœna duces tecum* in his case).

The witness, having been duly tendered (*or*, paid) his fee and mileage, was cautioned by the president that his refusal, if persisted in, would make him amenable to punishment under section 12 of the act of February 16, 1909; that is, a fine of not more than $500 or imprisonment not to exceed six months, or both. The question was again put to him.

22. Q. * * *.

The witness again declined to answer the question (*or*, to produce the desired book, paper, or document as required by the *subpœna duces tecum* in his case), and gave as the reason for his refusal that ——. (*Give reason with precision.*)

The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the facts of the refusal of the witness to testify (*or*, to produce the book, paper, or document, *etc.*) would, by order of the court, be certified to the district attorney for the necessary action in the premises, as required by law. A copy of the said certificate is appended, marked "——."

23. Q. * * *.

A. * * *.

The witness was directed to return the next day to verify his testimony, and was permitted to withdraw.

174; Act of Feb. 16, 1909, under 42 A. G. N.

A witness for the defense as to character (*or*, in extenuation) entered and was duly sworn.

125; 214

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(*Record testimony as previously indicated.*)

* * * * * * *

Z—— B——, a witness for the defense, was recalled and warned that the oath previously taken by him was still binding.

(*Record testimony as previously indicated.*)

* * * * * * *

3. Q. If you are the legal custodian of the current service record of the accused, produce it.

The witness produced the current service record of the accused, and it was submitted to the judge advocate and the court and by the accused offered in evidence. There being no objection, it was so received.

4. Q. Refer to that document and read such portions thereof as relate to the previous record of the accused.

The witness read from the said record an extract (extracts), copy appended, marked "Exhibit No. —."

214; 187; 195

* * * * * * *

The defense rested (*provided the defense has offered evidence*).

205

The rebuttal began (*in case there be a rebuttal*).

206

* * * * * * *

The rebuttal ended.

The surrebuttal began (*in case there be a surrebuttal*).

207

Var.—The accused did not desire to offer any evidence in surrebuttal.

* * * * * * *

The surrebuttal ended.

The court then, at — p. m., adjourned until — a. m. to-morrow, Saturday.

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THIRD DAY.

NAVY YARD, PHILADELPHIA PA.,
Saturday, July 18, 19—.

The court met at — a. m.

Present: (*As before.*)

The record of proceedings of yesterday was read and approved.

The court desired further testimony, and directed the recall of ——— ——— (*or*, that ——— ——— be called).

128

* * * * * * *

The accused read his written defense, copy appended, marked "Exhibit No. —."

Var. 1.—The accused requested a delay until ——— to prepare his written statement (argument). The request was granted, and the court then, at — p. m., adjourned to meet to-morrow, ———, at — a. m.

Var. 2.—The accused did not desire to make a statement, and submitted his case to the court.

Var. 3.—The counsel for the accused made the following argument:

Var. 4.—The court was cleared. The court was opened and the president announced that the court considered the statement of the accused to be inconsistent with his plea of guilty. The conflicting plea and statement were brought to the attention of the accused.

The accused adhered to the facts set forth in his statement.

The court directed the judge advocate to proceed as if the plea of not guilty to the ——— specification of the ——— charge had been entered.

The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the court had decided to allow the introduction of further evidence.

311 to 316

The judge advocate read his reply, appended, marked "Exhibit No. —."

Var. 1.—The judge advocate made the following argument:

Var. 2.—The judge advocate requested a delay until ——— to prepare his written reply (argument). The request was granted, and the court then, at — p. m., adjourned to meet to-morrow, ———, at — a. m.

313 to 316

The trial was finished.

(*In case the court, for satisfactory cause, decides to allow the prosecution or the defense to introduce further evidence:*)

The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the court had decided to allow the prosecution (defense) to introduce further evidence.

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X——— N———, a witness for the prosecution (defense), was recalled and warned that the oath previously taken by him was still binding.

(*Record testimony as previously indicated.*)

The court was cleared.

The judge advocate was recalled (informed that the court had met from day to day), and directed to record the following findings:

"The specification of the first charge, 'proved.'

"And that the accused, Lieutenant X——— Y. Z———, U. S. Navy, is of the first charge, 'guilty.'

"The first specification of the second charge, 'proved in part, proved except the words "——— ———," which words are not proved.'

"The second specification of the second charge, 'proved in part, proved except the words "——— ———," which words are not proved, and for which the court substitutes the words "——— ———," which words are proved.'

"And that the accused, Lieutenant X——— Y. Z———, U. S. Navy, is of the second, 'guilty in a less degree than charged, guilty of ———.'

"The specification of the third charge, 'not proved.'

"And that the accused, Lieutenant X——— Y. Z———, U. S. Navy, is, of the third charge, 'not guilty'; and the court does, therefore, acquit (fully acquit) (honorably acquit) (most fully and honorably acquit) the said Lieutenant X——— Y. Z———, U. S. Navy, of the third charge."

318 to 325

The judge advocate stated that he had (no) record of previous conviction(s) (that the rate of pay of the accused (*if an enlisted man*) is $——— a month and that he had enlisted on ———).

326

(*In case there be record of previous conviction*):

The court was opened and all parties to the trial entered. The president announced that the court was ready to receive the record of previous conviction.

There being no objection, the judge advocate read from the (current) service record of ——— (the accused, while serving under the name of ———) an extract showing previous conviction(s) copy appended, marked "Exhibit No. —."

Var. 1.—The accused (court) objected to the introduction of the record of his trial by summary court-martial on March 4, 1914, on the ground that the record had not been approved by the convening authority.

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The court was cleared. The court was opened. All parties to the trial entered, and the president announced that the court sustained (did not sustain) the objection.

Var. 2.—There being no objection, the judge advocate presented to the court general court martial order No. —, dated ———, 1914, in the case of the accused.

326 to 334

The court was cleared (*for the purpose of deliberating on the sentence*).

335; 336

The judge advocate was recalled, and directed to record the sentence of the court as follows:

354; 355

"The court, therefore, sentences him, Lieutenant X———Y. Z———, U. S. Navy, to be dismissed from the United States naval service."

A———B. C———,
Captain, U. S. Navy, President.
D———E. F———,
Commander, U. S. Navy, Member.
G———H. I———,
Captain, U. S. Marine Corps, Member.
J———K. L———,
Lieutenant, U. S. Navy, Member.
M———N. O———,
Lieutenant, U. S. Navy, Member.
P———Q. R———,
First Lieutenant, U. S. Marine Corps, Member.
S———T. U———,
Lieutenant (j. g.) U. S. Navy, Member.
V———V. W———,
First Lieutenant, U. S. Marine Corps, Judge Advocate.

356

Var. 1.— ——— ——— to be shot to death by musketry (hanged by the neck until dead), two-thirds of the members concurring.

337; 354

Var. 2.— ——— ——— to be dismissed from the United States naval service and to be imprisoned in such prison or penitentiary as the convening authority may designate for a period of two (2) years.

338; 339

Var. 3.— ——— ——— to lose one (1) year, nine (9) months' seniority in the date of his warrant as machinist; to lose corresponding rank in the list of

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machinists of the Navy; and to lose during a period of one (1) year the difference between his present rate of pay and the next lower rate of graded pay as machinist.

340; 343

Var. 4.— ——— ——— to be restricted to his ship or station for a period of three (3) months, and to lose fifty dollars ($50) per month of his pay for a period of ten (10) months.

341

Var. 5.— ——— ——— to lose fifty (50) numbers in his grade (to be placed at the foot of the ———'s list of present date and to there remain until he shall have lost fifty (50) numbers in his grade.)

342

Var. 6.— ——— ——— to be dismissed from the United States Marine Corps and from the United States naval service.

338

Var. 7.—The court therefore sentences him ——— ———, United States ——— (to be reduced to the rating (rank) of ———), to be confined for a period of ———, (then to be dishonorably discharged from the United States naval service, or to be discharged from the United States naval service with a bad conduct discharge), and to suffer all the other accessories of said sentence, as prescribed by section 349, Naval Courts and Boards.

346; 348; 349

Var. 8.—The court, therefore, sentences him, ——— ———, seaman, United States Navy (to lose pay amounting to one hundred and forty-five (145) dollars and twenty (20) cents, and) to be dishonorably discharged from the United States naval service.

350

Var. 9.—For summary court punishments see p. 396.

347

In consideration of his previous good record (*or, whatever the reason may be upon which the recommendation is based*), we recommend ——— ———, ———, U. S. Navy, to the clemency of the reviewing authority.

357

A——— B. C———,
Captain, U. S. Navy, President.
G——— H. I———,
Captain, U. S. Marine Corps, Member.
S——— T. U———,
Lieutenant (j. g.) U. S. Navy, Member.

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The court was opened and proceeded with the trial of ——— ———, ———, U. S. ———.

A——— B. C———,
Captain, U. S. Navy, President.
V——— V. W———,
First Lieutenant, U. S. Marine Corps, Judge Advocate.

Var. 1.—The court then, at — p. m., adjourned to meet to-morrow, ———, (on Monday next), at — o'clock a. m. (*Signed as above.*)

Var. 2.—The court, having no more cases before it, adjourned to await the action of the reviewing authority. (*Signed as above.*)

Var. 3.—The court adjourned to await the call of the president. (*Signed as above.*)

365

Case of
LIEUTENANT X——— Y. Z———,
U. S. Navy,
July 29, 19—.
85

RECORD OF PROCEEDINGS IN REVISION

OF A

GENERAL COURT MARTIAL

CONVENED AT

THE NAVY YARD, PHILADELPHIA, PA.,

BY ORDER OF

THE SECRETARY OF THE NAVY.

376

Copy furnished.
Var.—Copy waived.

379

FORMS OF LETTERS RETURNING RECORD TO COURT FOR REVISION.

NAVY DEPARTMENT,
Washington, July —, 19—.

From: The Secretary of the Navy.
To: Captain A—— B. C———, U. S. Navy, president, general court-martial, navy yard, Philadelphia, Pa.
Subject: Trial of Lieutenant X——— Y. Z———, U. S. Navy.
Inclosure: 1.

1. The record of proceedings of the general court-martial of which you are president in the case of Lieutenant X——— Y. Z——— is returned herewith to the court.

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2. The department, after careful consideration, is of the opinion that the sentence adjudged by the court is not adequate to the offense found proved. In this connection, the attention of the court is called to C. M. O. —, 19—, and —, 19—, respectively.

3. The court will reconvene for the purpose of reconsidering its sentence.

4. Upon the conclusion of such proceedings, the record will be returned to the Judge Advocate General.

372; 384

U. S. S. "TEXAS,"
Hampton Roads, Va., July —, 19—.

From: Commander in Chief, U. S. Atlantic Fleet.
To: Captain A——— B. C———, U. S. Navy, president, general court-martial, U. S. S. *Texas.*
Subject: Trial of ——— ———, seaman, U. S. Navy.
Inclosure: 1.

1. The record of proceedings of the general court-martial of which you are president in the case of ——— ———, seaman, U. S. Navy, is herewith returned to the court.

2. The convening authority, after careful consideration, does not consider that the finding is in accord with the evidence which was brought before the court, in that the accused did, by his plea, admit his absence from the naval service between the dates specified, a period of one year and two months, and failed to bring any evidence to show that it was impossible to return to his duty or that he had endeavored in any way to communicate with the naval authorities.

3. The prosecution brought evidence to show that the accused was in civilian clothes when he surrendered on board the *New York.* The accused made no explanation whatever of his prolonged absence from his station and duty, and this fact furnishes a presumption of the intent necessary to prove desertion, as does also the fact that the accused had some time during his long absence, to which he pleaded guilty, disposed of his uniform, and was obliged to surrender himself, when he did surrender, dressed in civilian clothes.

4. The court will reconvene for the purpose of reconsidering the finding and sentence. At the conclusion of the proceedings in revision, the record will be returned to the convening authority.

372; 384

NAVY YARD, PHILADELPHIA, PA.,
Thursday, July —, 19—.

The court reconvened at 10 a. m., pursuant to an order hereto prefixed, marked "A," which was read by the judge advocate.

Present: (*Here insert the names.*)

Absent: (*Here insert the names, with reason for absence in each case.*)

373; 374

(*When applicable.*—The court having decided that the presence of accused was necessary to the ends of justice, the accused (with counsel) was called before the court and the convening order was reread).

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The court was cleared.

380

The judge advocate was recalled and directed to record that the court decided to revoke its former finding (sentence) in the case of Lieutenant X——— Y. Z———, U. S. Navy, and to substitute therefor the following finding (sentence): ——— ———.

381

(*Signed by all the members present and the judge advocate.*)

376

Var. 1.— ——— and to substitute therefor the following finding: "The specification proved in part, proved except, *etc.* The court respectfully adheres to its former sentence."

Var. 2.— "——— decided respectfully to adhere to its former finding (finding and sentence) (sentence)."

381

Var. 3.— "——— decided to correct the following clerical errors:

(*a*) On page ———, by inserting between lines 10 and 11, the following: "———."

(*b*) On page 9, by omitting from lines 16 and 17 the following: "———."

(*c*) On page 20, by omitting the words "———," lines 5 to 9, inclusive, and substituting therefor the words "———."

377

The court then took up the next case.

Var. 1.— ——— adjourned to await the action of the reviewing authority.

Var. 2.— ——— then, at — p. m., adjourned to meet tomorrow (on Monday next) at — o'clock a. m.

Var. 3.— ——— proceeded with the trial of ——— ———.

(*Signed by the president and judge advocate.*)

376

* * * * * * *

(*Action of convening authority on the record.*)

U. S. S. ———

OFF ———, ———,

July ———, *19*—.

The proceedings, finding(s), and sentence of the general court-martial in the foregoing case of Lieut. X——— Y. Z———, U. S.

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Navy, are approved. He will be released from arrest and restored to duty.

M——— L. M———,
Admiral, U. S. Navy,
Commander in Chief, U. S. Atlantic Fleet.

Or, *Rear Admiral, U. S. Navy,*
Commander, Cruiser Force,
U. S. Atlantic Fleet.

Or, *Rear Admiral, U. S. Navy, Commandant,*
Commanding U. S. Naval Station,
Olongapo, P. I.

382

Var. 1.—The proceedings of the general court-martial in the foregoing case of Lieutenant X——— Y. Z———, U. S. Navy, are approved; the findings and the sentence are disapproved for the following reasons (*state reasons*); he will be released from arrest and restored to duty.

384; 385

Var. 2.—The proceedings of the general court-martial in the foregoing case of Lieutenant X——— Y. Z———, U. S. Navy, are approved; the findings on the first and second specifications of the first charge and on the first charge are disapproved; and the findings on the second and third charges and the specifications thereunder and the sentence, are approved. He will be released from arrest and restored to duty.

Var. 3.—The proceedings, findings, and sentence of the general court-martial in the foregoing case of ——— ——— are approved, and the naval prison at the navy yard, ———, ———, is designated as the place for the execution of so much of the sentence as relates to confinement.

Var. 4.—The proceedings, findings, and sentence of the general court-martial in the foregoing case of ——— ——— are approved. The U. S. S. ——— is designated as the place of confinement until an opportunity offers for transfering him to the naval prison, Portsmouth, N. H., or such other prison as may be designated, for the unexpired portion of his sentence.

388

Var. 5.—The proceedings, findings, and sentence of the general court-martial in the foregoing case of ——— ——— are approved.

In view, however, of the unanimous recommendation to clemency, the ——— is reduced to ———.

384

Var. 6.—The proceedings, findings, and acquittal of the general court-martial in the foregoing case of ——— ——— are approved, and he will be released from confinement (arrest) and restored to duty.

Var. 7.—The proceedings, findings, and sentence of the general court-martial in the foregoing case of Lieutenant X——— Y. Z———, U. S. Navy, are approved, and, in conformity with article 53 of the Articles for the Government of the Navy, the record is respectfully referred to the Secretary of the Navy for transmission to the President.

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Var. 8.—The proceedings, findings, and sentence of the general court-martial in the foregoing case of ——— ——— are approved; but that portion of the sentence which involves confinement is remitted. The dishonorable (bad conduct) discharge is remitted on condition that ——— during a period of ——— conducts himself in such a manner as in the opinion of his commanding officer warrants his further retention in the service; otherwise he is to be dishonorably discharged at the discretion of his commanding officer at any time during said period; the loss of pay (and allowances) is reduced to the loss of ——— less the amount of his indebtedness to the United States on the date of the approval of this sentence, and the loss of pay (and allowances) as thus reduced is remitted subject to the conditions specified in article I-4893, Naval Instructions, 1913. (——— will be required to serve under his fraudulent enlistment.)

384

LETTER EMPOWERING CERTAIN OFFICERS TO ORDER GENERAL COURTS-MARTIAL.

(See Act of Aug. 29, 1916, quoted under art. 38, A. G. N., p. 39.)

File No. —.

NAVY DEPARTMENT,
Washington, October —, 19—.

In accordance with the authority vested in me by law, I hereby empower the commander, battleship force, U. S. Atlantic Fleet, to convene general courts-martial (*or*, the commanding officer, first brigade, U. S. Marine Corps, to convene general courts-martial while such brigade is serving on shore beyond the continental limits of the United States) (*or*, the commandant of the navy yard, Norfolk, Virginia, to convene general courts-marital during the continuance of the present war between the United States and ———.)

———, ———,
Secretary of the Navy.

The power thus conferred may be restricted by accompanying instructions limiting the exercise of this power to occasions when such officer is not in company with a superior. Precepts for general courts-martial (and courts of inquiry, see act of August 29, 1916, quoted under article 55, A. G. N.) convened in accordance with the above authorization should contain a reference to same, thus:

Pursuant to the authority vested in me by the Secretary of the Navy (department's file No. ———, dated October —, 19—), a general court-martial is hereby ordered to convene, etc.

LETTER ACCOMPANYING A NEW PRECEPT FOR A PERMANENT COURT.

NAVY DEPARTMENT,
Washington, July —, 19—.

From: The Secretary of the Navy.
To: Captain A——— B. C———, U. S. Navy, navy yard, Philadelphia, Pa., via Commandant.
Subject: Authorizing general court martial to take up cases pending before court convened by precept of January —, 19—.

1. The general court martial of which you are president, appointed by the department's precept of this date, to convene at the navy yard, Philadelphia, Pa., is hereby authorized and directed to take up such cases, if any, as may be

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pending on that date before the general court-martial appointed by the department's precept of January —, 19—, of which you are president, except such cases the trial of which may have been commenced.

2. A copy of this letter will be attached to all cases referred to the court prior to the date of the precept transmitted herewith.

(*To be read by the judge advocate and prefixed to the record in all cases where applicable.*)

LETTER FROM CONVENING AUTHORITY MAKING CHANGE IN COMPOSITION OF COURT.

NAVY DEPARTMENT,
Washington, July —, 19—.

From: The Secretary of the Navy.

To: Captain A——— B. C———, U. S. Navy, president, general court-martial, navy yard, Philadelphia, Pa., via Commandant.

Subject: Appointment of Lieutenant F——— S. A———, U. S. Navy, as member of court in place of Lieutenant M——— N. O———, U. S. Navy, hereby relieved.

1. Lieutenant F——— S. A———, U. S. Navy, is hereby appointed a member (judge advocate) of the general court-martial, of which you are president, at the navy yard, Philadelphia, Pa., in place of Lieutenant M——— N. O———, U. S. Navy, hereby relieved from that duty.

225; 230

LETTER TRANSMITTING CHARGE AND SPECIFICATION.

NAVY DEPARTMENT,
Washington, July —, 19—.

To: First Lieut. ———, U. S. Marine Corps,
Judge Advocate, General Court-Martial, Navy Yard, ———.

Subject: Charge(s) and specification(s) in case of ———.

1. The above-named man (officer) will be tried before the general court-martial of which you are judge advocate, upon the following charge(s) and specification(s). You will notify the president of the court accordingly, inform the accused of the date set for his trial, and summon all witnesses, both for the prosecution and the defense:

CHARGE:

Specification: ———

* * * * * * *

——— ———,
Secretary of the Navy.

LETTER TRANSMITTING COPY OF CHARGE AND SPECIFICATION TO COMMANDING OFFICER UNDER WHOM THE ACCUSED IS SERVING.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, July —, 19—.

From: Judge Advocate General.

To: Commanding Officer, U. S. S. *Texas*, navy yard, Philadelphia, Pa.

Subject: Trial of C——— J. S———, seaman, U. S. Navy, by the general court-martial of which the president is ——— ———.

Inclosure: 1.

There is transmitted herewith certified copy of charge , with specification , for delivery to the accused in this case, with notice that he will be tried before the above-mentioned general court-martial.

The judge advocate of the court has been directed to summon such witnesses as may be required for the defense.

By direction of the Secretary of the Navy.

(*Not appended to record.*)

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LETTER TO COMMANDING OFFICER, INCLOSING CHARGES AND SPECIFICATIONS AND PLACING OFFICER UNDER ARREST.

NAVY DEPARTMENT,
Washington, July —, 19—.

From: The Secretary of the Navy.
To: Commanding officer, U. S. S. *Texas.*
Subject: Trial by general court-martial of Lieutenant X——— Y. Z———, U. S. Navy.
Inclosures: 2.

1. You will deliver the inclosed copy of charges and specifications to Lieutenant X——— Y. Z———, place him under arrest in conformity with article 44 of the Articles for the Government of the Navy, and direct him to report to Captain A——— —B. C——— at the time designated for his trial before the general court-martial of which that officer is president.

41; 42

LETTER TO COMMANDANT OF NAVY YARD (COMMANDING OFFICER OF VESSEL) DIRECTING HIM TO FURNISH CLERICAL ASSISTANCE.

NAVY DEPARTMENT,
Washington, July —, 19—.

From: The Secretary of the Navy.
To: Commandant, navy yard, Philadelphia, Pa.
Subject: General court-martial; detail of clerical assistance.

1. A general court-martial, of which Captain A——— B. C———, is president, has been ordered to convene at the navy yard, Philadelphia, Pa., at 10 o'clock a. m., on July —, 19—.

2. You will detail from among the civil employes or enlisted force under your command such clerical assistance as may be required by the judge advocate in recording the proceedings of the court.

(*Not appended to record*).

270

LETTER TO JUDGE ADVOCATE AUTHORIZING THE EMPLOYMENT OF A STENOGRAPHER.

NAVY DEPARTMENT,
Washington, July —, 19—.

From: The Secretary of the Navy.
To: First Lieutenant V——— V. W———, U. S. Marine Corps, judge advocate, general court martial, navy yard, Philadelphia, Pa.
Subject: Authorizing employment of a stenographer for general court martial.

1. You are hereby authorized and directed to employ at the best obtainable rates, not to exceed the customary market rates, to be agreed upon in writing before any services are rendered, such stenographic assistance as may in your judgment be requisite and proper, for the purpose of recording the proceedings to be had and the testimony to be taken by the general court-martial of which

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you are judge advocate, ordered to convene at the navy yard, Philadelphia, Pennsylvania, on Monday, July —, 19—.

2. This agreement will embrace a separate charge for the copying of such matter as may not be taken stenographically.

3. Should it appear at any time subsequent to the making of the original agreement that service other than that specified therein is necessary a new agreement in writing shall at once be made concerning the additional service. Copies of the agreement will be made in duplicate, one copy to be retained by the stenographer and the other by the judge advocate. When the services have been performed you will require the bills therefor to be submitted in duplicate, and after certifying to their correctness will forward them to the Bureau of Supplies and Accounts, via the Judge Advocate General, with your copy of the agreement.

4. The commandant, navy yard, Philadelphia, Pa., has been directed to furnish you with the necessary clerical assistance.

270; 272

(*Not appended to record.*)

AGREEMENT BETWEEN JUDGE ADVOCATE AND STENOGRAPHER.

——— ———,

——— —, 19—.

I propose to do the necessary stenographic work in the ——— ——— to be convened at ——— ———, on the ——— day of ———, 19—, for the ——— ——— ———, and furnish ——— copies of the record for ——— cents per folio of ——— words (or, for $——— per diem); and to copy such matter as may not be taken stenographically for ——— cents per folio.

Should additional service, other than that herein specified, become necessary, a new agreement for such service at not more than market rates therefor will be made.

——— ———.

The above proposition is accepted.

——— ———,

Judge Advocate.

This agreement should be made in duplicate, one copy to be retained by the stenographer and the other by the judge advocate. When the services have been performed the judge advocate will require the bills therefor to be submitted to him in duplicate, and, after certifying to their correctness, he will forward them to the Bureau of Supplies and Accounts, via the Judge Advocate General, with his copy of this agreement.

270

LETTER TO JUDGE ADVOCATE AUTHORIZING CORRECTION IN THE SPECIFICATIONS.

NAVY DEPARTMENT,
Washington, July —, 19—.

From: The Secretary of the Navy.
To: First Lieutenant V——— V. W———, U. S. Marine Corps, judge advocate, general court-martial, navy yard, Philadelphia, Pa.
Subject: Authorizing correction in specifications.

1. You are hereby authorized and directed to change the copy of charges and specifications preferred by the department against Lieutenant X——— Y.

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Z———, U. S. Navy, in the following particular: On page 3, line 6, the word "———" to "———."

2. You will cause the copy in possession of Lieutenant Z——— to be corrected accordingly.

(*Prefixed to record, following charges and specifications.*)

55

LETTER TO JUDGE ADVOCATE AUTHORIZING A NOLLE PROSEQUI.

NAVY DEPARTMENT,
Washington, July —, 19—.

From: The Secretary of the Navy.

To: First Lieutenant V——— V. W———, U. S. Marine Corps, judge advocate, general court martial, navy yard, Philadelphia, Pa.

Subject: Authorizing the entry of a *nolle prosequi* in the case of Lieutenant X——— Y. Z———, U. S. Navy.

1. You are hereby authorized and directed to enter a *nolle prosequi* in the case of Lieutenant X——— Y. Z———, on the charge and specification preferred against him by the department, and forwarded to you on July —, 19—, for trial.

2. You will return all papers in the foregoing case to the department (Office of the Judge Advocate General).

(*Appended to record.*)

60

REQUEST FOR COURT ROOM AND FOR PROVOST MARSHAL, GUARD, AND ORDERLIES.

U. S. S. "TEXAS,"
Navy Yard, New York, July —, 19—.

From: First Lieutenant V——— V. W———, U. S. Marine Corps, judge advocate, general court-martial.

To: Commandant, via commanding officer.

Subject: Request for court room and for detail of provost marshal, guard, and orderlies for general court-martial.

1. Having been appointed judge advocate of a general court-martial, ordered to convene at the navy yard under your command at 10 o'clock a. m., on Monday, July —, 19—, I respectfully request that a suitable place be assigned for the sessions of the court, and that a provost marshal and the necessary guard and orderlies be detailed.

253; 274; 276

ORDER TO PRESIDENT OF COURT WHEN TRAVEL IS INVOLVED.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION,
Washington, July —, 19—.

From: Bureau of Navigation.

To: Captain A——— B. C———, U. S. Navy, commanding U. S. S. *Texas*, navy yard, Boston, Mass.

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Subject: Orders to proceed to the navy yard, New York, in connection with general court-martial.

1. Having been appointed president of a general court-martial ordered to convene at the navy yard, New York, at 10 o'clock a. m., on Monday, July —, 19—, you will proceed to that place and report to the commandant of the said yard on the date specified.

2. The members of the court and the judge advocate have been directed to report to you.

3. Upon the completion of this duty return to Boston, Mass., and resume present duties.

(*If court is ordered by a convening authority other than the Secretary of the Navy, this order is issued by such convening authority.*)

(*When the president of the court is senior to the commandant of the station he is ordered to confer with instead of reporting to the latter.*)

(*Not appended to record.*)

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ORDER TO PRESIDENT OF COURT WHEN NO TRAVEL IS INVOLVED.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION,
Washington, July —, 19—.

From: Bureau of Navigation.

To: Captain A——— B. C———, U. S. Navy, commanding U. S. S. *Texas*, navy yard, Boston, Mass.

Subject: Orders to report to commandant, navy yard, Boston, Mass., for duty as president of a general court-martial.

1. Having been appointed president of a general court-martial ordered to convene at the navy yard, Boston, Mass., you will report to (confer with) the commandant of the said yard on the date specified.

2. The members of the court and the judge advocate have been directed to report to you.

3. This is in addition to your present duties.

(*Not appended to record. See note ante.*)

ORDER TO MEMBER OR JUDGE ADVOCATE WHEN TRAVEL IS INVOLVED.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION,
Washington, July —, 19—.

From: Bureau of Navigation.

To: Lieutenant M——— N. O———, U. S. Navy, U. S. S. *Texas*, Navy Yard, New York, via Commanding Officer.

Subject: Appointment as member of a general court-martial.

1. Having been appointed a member (judge advocate) of a general court-martial ordered to convene at the navy yard, Philadelphia, Pennsylvania, at 10 o'clock a. m., on Monday, July —, 19—, you will proceed to that place and report to Captain A——— B. C———, U. S. Navy, president of that court, at the time specified.

2. Upon the completion of this duty return to New York.

3. This is in addition to your present duties.

(*Not appended to record. See note ante.*)

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ORDER TO MEMBER OR JUDGE ADVOCATE WHEN NO TRAVEL IS INVOLVED.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION,
Washington, July —, 19—.

From: Bureau of Navigation.
To: Lieutenant M——— N. O———, U. S. Navy, U. S. S. *Texas*, via Commanding Officer.
Subject: Appointment as member of a general court-martial.

1. Having been appointed a member (judge advocate) of a general court-martial ordered to convene at the navy yard, Boston, Mass., at 10 o'clock a. m., on Monday, July —, 19—, you will report to Captain A——— B. C———, U. S. Navy, the president of the court, at the place and time specified.

2. This is in addition to your present duties.

(*Not appended to record. See note ante.*)

SUMMONS FOR NAVAL WITNESS.

COURT MARTIAL ROOM, NAVY YARD,
Philadelphia, Pa., July —, 19—.

From: First Lieutenant V——— V. W———, U. S. Marine Corps, judge advocate, general court-martial.
To: Lieutenant G——— C. C———, U. S. Navy, navy yard, Philadelphia, Pa., via Commandant.
Subject: Summons as a witness before a general court-martial.

You are hereby summoned to appear before a general court-martial at the navy yard, Philadelphia, Pa., at 10 o'clock a. m., July —, 19—, as a witness for the prosecution (defense) in the case of Lieutenant X——— Y. Z———, U. S. Navy.

(*Not appended to record.*)

122; 123

SUBPŒNA FOR CIVILIAN WITNESS.

NAVAL GENERAL COURT-MARTIAL OF THE UNITED STATES,
Navy Yard, New York.

UNITED STATES
v.
LIEUTENANT X——— Y. Z———, U. S. NAVY. } Subpœna.

The President of the United States to J——— B. S———:

You are hereby commanded to appear as a witness for the ———, at 10 o'clock a. m., June 22, 19—, before a naval general court-martial of the United States, convened at the navy yard, New York, by an order of the Secretary of the Navy, dated June 11, 19—.

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

Bring with you this precept and depart not the court without leave.

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Witness: Capt. A——— B. C———, U. S. Navy, president of the said court, this 21st day of June, 19—.

V——— V. W———,
First Lieutenant, U. S. Marine Corps,
Judge Advocate.

(In the case of a civilian witness residing outside the State, Territory, or district where the court is held, or whose appearance is desired before a court or board other than a general court-martial or court of inquiry, the foregoing should read:

You are hereby requested to appear as a witness for the ———, at 10 o'clock a. m., June 22, 19—, before a naval general court-martial of the United States convened at the navy yard, New York (*or, before a summary court-martial, etc., or as the case may be*).

V——— V. W———,
First Lieutenant, U. S. Marine Corps,
Judge Advocate.

124; 129

SUBPŒNA DUCES TECUM FOR NAVAL WITNESS.

COURT MARTIAL ROOM,
Navy Yard, New York, July —, 19—.

From: First Lieutenant V——— V. W———, U. S. Marine Corps, judge advocate, general court-martial.

To: Lieutenant H——— H. J———, U. S. Navy, navy yard, New York, via Commandant.

Subject: Summons as witness before a general court-martial, with instructions to bring before the court certain described documents.

1. You are hereby summoned to appear before a general court-martial at the navy yard, New York, at 10 o'clock a. m., July —, 19—, as a witness for the prosecution (defense) in the case of Lieutenant X——— Y. Z———, U. S. Navy.

2. You will also bring with you the following described documents. (*Describe them.*)

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SUBPŒNA DUCES TECUM FOR CIVILIAN WITNESS.

NAVAL GENERAL COURT-MARTIAL OF THE UNITED STATES,
Navy Yard, New York.

UNITED STATES
v.
LIEUTENANT X——— Y. Z———, U. S. NAVY. } Subpœna.

The President of the United States to J——— B. S———:

You are hereby commanded to appear as a witness for the prosecution (defense), at 10 o'clock a. m., June 22, 19—, before a naval general court-martial of the United States, convened at the navy yard, New York, by an order of the Secretary of the Navy, dated June 11, 19—, and bring with you the following-described documents: (Here describe them.)

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

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Bring with you this precept, and depart not the court without leave.

Witness: Capt. A——— B. C———, U. S. Navy, president of the said court, this 21st day of June, 19—.

V——— V. W———,
First Lieutenant, U. S. Marine Corps, Judge Advocate.

202

SUBPŒNA FOR TAKING DEPOSITION OF A CIVILIAN WITNESS.

NAVAL GENERAL COURT-MARTIAL OF THE UNITED STATES,
Navy Yard, New York.

UNITED STATES
v.
LIEUTENANT X——— Y. Z———, U. S. NAVY. } Subpœna.

The President of the United States to J——— B. S———:

You are hereby commanded to appear as a witness for the prosecution (defense) on June —, 19—, at — o'clock — m., before (*to be designated by the convening authority*), detailed to take your deposition for use before a naval general court-martial of the United States, convened at the navy yard, New York, by an order of the Secretary of the Navy, dated June 11, 19—.

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

Bring with you this precept, and depart not without leave.

Witness: Capt. A——— B. C———, U. S. Navy, president of the said court, this 21st day of June, 19—.

V——— V. W———,
First Lieutenant, U. S. Marine Corps, Judge Advocate.

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LETTER DIRECTING THE TAKING OF DEPOSITIONS.

DEPARTMENT OF THE NAVY,
Washington, November 19, 1915.

From: The Secretary of the Navy. (*Or*, other convening authority, if addressed to an officer under his command.)

To: Lieutenant ——— ———, U. S. Navy, U. S. Navy recruiting station ———, ———.

Subject: Designation to take depositions.

Inclosures: Subpœnas and interrogatories to be used in taking depositions to be used in the case of ——— ———, fireman, first class, U. S. Navy.

1. You are hereby authorized and directed to serve the subpœnas and propound the interrogatories forwarded herewith.

2. You will take the depositions required at the earliest practicable date and you will notify the judge advocate of the general court-martial at the navy yard, New York, as to the probable date on which he may expect to receive this testimony.

3. Upon completion of the said depositions, forward the same direct to the judge advocate of the general court-martial at the navy yard, New York.

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INTERROGATORIES AND DEPOSITION.

Interrogatories.

UNITED STATES
v.
LIEUTENANT X——— Y. Z———,
U. S. Navy.

The following interrogatories and cross-interrogatories to be propounded under section 16 of the act of Congress approved February 16, 1909, to ——— ———, stationed (*or* residing) at ——— ———, a witness for the prosecution (defense) in the above-entitled case now pending and to be tried before the general court-martial convened by an order of the Secretary of the Navy, dated June 11, 19—, are accepted by the court in open session, the defense (prosecution) having been given reasonable opportunity to submit cross-interrogatories (*or* are agreed upon by both parties in advance of the assembling of the court and subject to exceptions when read in court), and are respectfully forwarded to ——— ——— with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

First interrogatory: Are you in the United States Navy? If yes, what is your full name, rank, and vessel or station? If no, what is your full name, occupation, and residence?

Second interrogatory: Do you know the accused? If yes, how long have you known him?

Third interrogatory: ——— ———?

Etc.

First cross-interrogatory: ——— ———?

Etc.

First interrogatory by the court: ——— ———?

Etc.

Dated at the navy yard, New York, June —, 19—.

A——— B. C———,
Captain, U. S. Navy, President of the Court.
V——— V. W———,
First Lieutenant, U. S. Marine Corps, Judge Advocate.

(*Or, if taken in advance of the assembling of the court, the signatures should be those of the judge advocate and the accused, thus:*)

V——— V. W———,
First Lieutenant, U. S. Marine Corps, Judge Advocate.
X———, Y. Z———,
Lieutenant, U. S. Navy.

Deposition.

J——— B. S———, the witness above named, having been first duly sworn by me, Lieutenant ———, U. S. Navy, in charge of U. S. Navy Recruiting Station, ———, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: ——— ———.

Etc.

J——— B. S———.

Subscribed and sworn to before me this —— day of June, 19—.

——— ———,
Lieutenant, U. S. Navy, in charge of U. S. Navy Recruiting Station, ———.

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RETURN OF SERVICE ON A SUBPŒNA.

UNITED STATES
v.
LIEUTENANT X——— Y. Z———, U. S. NAVY.

NAVY YARD, NEW YORK,
June 22, 19—.

I certify that I made service of the within subpœna on J——— B. S———, the witness named therein, by personally delivering to him a duplicate of the same at (*address*), on the 21st day of June, 19—.

B——— R. G———,
Lieutenant, U. S. Navy,
Provost Marshal, General Court-Martial.
(Or other person, as the case may be.)

———— ————
———— ————} *ss.* (State and county, or navy yard, etc., where affidavit is taken.)

B——— R. G———, being duly sworn, on his oath states that the foregoing certificate is true.

B——— R. G———.

Subscribed and sworn to this 22d day of June, 19—, before me.

V——— V. W———,
First Lieutenant, U. S. Marine Corps, Judge Advocate.
(Or other officer, giving title, before whom affidavit is made.)

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WARRANT OF ATTACHMENT.

NAVAL GENERAL COURT-MARTIAL OF THE UNITED STATES.

UNITED STATES
v.
LIEUTENANT X——— Y. Z———, U. S. NAVY.

The President of the United States to Lieut. B——— R. G———, U. S. Navy, provost marshal for said court:

Whereas J——— B. S———, of ———— ————, was on the ——— day of June, 19—, at ———, duly subpœnaed to appear and attend at the navy yard, New York, on the ——— day of June, 19—, at 10 o'clock a. m., before a naval general court-martial of the United States, duly convened by an order of the Secretary of the Navy, dated June 11, 19—, to testify on the part of the prosecution (defense) in the above-entitled case:

And whereas he has willfully neglected, refused, and failed to appear and attend (*or*, and to produce documentary evidence which he was legally subpœnaed to produce) before said general court-martial as by said subpœna required:

And whereas he is a necessary and material witness on behalf of the prosecution (defense) in the above-entitled case:

Now, therefore, by virtue of the power vested in said naval court-martial by section 11 of an act of Congress entitled "An act to promote the administration of justice in the Navy," approved February 16, 1909, of which court-martial I,

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the undersigned, am president, you are hereby commanded and empowered to apprehend and attach the said J——— B. S———, wherever he may be found within the State (Territory or District) of New York, and forthwith bring him before the said general court-martial assembled at the navy yard, New York, to testify as required by said subpœna.

Dated Navy Yard, New York, June —, 19—.

A——— B. C———,

Captain, U. S. Navy, President of said General Court-Martial.

131

ACCOUNT OF CIVILIAN WITNESS NOT IN GOVERNMENT EMPLOY.

_____,

_____,

_____, *191__.*

THE UNITED STATES, NAVY DEPARTMENT,

To _____, *Dr.*

Address _____

_____

	Dollars.	Cents.
For allowance while in attendance before a ..... court-martial convened at ..... from ....., 191.., to ....., 191.., as per ..... certificate hereon, being ..... days, at $1.50 per day		
For mileage from ..... to ..... and return, in accordance with subpœna attached, being ..... miles, at 5 cents per mile		
Total		

I solemnly swear that the above account is correct, and that I have not been furnished with Government transportation for any part of the journey for which travel fare is charged, and that I have not heretofore received payment for any part of this account.

_____.

Sworn to and subscribed before me at _____ _____, on this _____ day of _____, 191__.

_____,

_____, *U. S.*

(Judge Advocate, or proper officer.)

I certify that _____ _____, a civilian not in Government employ, has been in attendance as a witness before the _____ court martial, of which I am _____, in session at _____ _____ from _____ _____, 191__, to _____ _____ 191__, inclusive, and that _____ was duly summoned thereto from _____ and that _____ was not furnished transportation by the Government for any portion of this journey.

_____,

_____, *U. S.*

(Judge Advocate, or proper officer.)

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To _____,

Pay _____, *U. S. Navy.*

You are hereby directed to pay mileage and witness fees or cost of travel and expenses for civilian witness, whose account is set forth above in the sum of _____ ($_____).

_____,

_____*U. S. Navy, Commanding.*

Paid by check No. _____ on assistant treasurer at _____, dated _____ _____, 191__, for $_____, in favor of _____ _____.

_____,

_____ *Pay* _____, *U. S. N.*

(Receipt to be signed only when payment is made in cash.)

Received _____ _____, 191__, of _____, Pay _____, U. S. Navy, in cash _____ dollars, in full of above account.

_____.

(Witness.)

(Certified copy of order convening the court and the subpœna must be attached to this voucher.)

VOUCHER FOR REIMBURSEMENT OF TRAVELING EXPENSES, CIVILIAN WITNESS IN GOVERNMENT EMPLOY.

The UNITED STATES, NAVY DEPARTMENT,

To _____, Dr.

Address: _____

	Dollars.	Cents.
For reimbursement of traveling expenses incurred in attendance as a witness before the ..... court-martial at ....., from ....., 19...., to ....., 19...., in accordance with the subpœna which is attached hereto and forms a part of this account—as per itemized statement herein set forth.....	.....	.....
Amount claimed.....	.....	.....

I solemnly swear that the above account and schedule annexed are just and true in all respects, as verified by a memorandum kept by me; that the distances as charged have been actually and necessarily traveled on the dates therein specified; that the amounts as charged have been actually paid by me for traveling expenses; that I have not and will not receive, directly or indirectly, from any person, agency, or corporation any sums as rebate on account of any expenses of transportation included in this account; that none of such distances for which charge is made was traveled under any free pass on any conveyance; that no part of the account has been paid by the United States, but the full amount is justly due; that all expenditures included in said account other than my own personal traveling expenses were made under urgent and unforeseen public necessity, and that it was not, for the reasons stated herein, feasible to

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have payment made for such expenditures by a pay officer of the Navy Department. So help me God.

_____

Sworn to and subscribed before me at _____, on this _____ day of _____, 19__.

_____,
_____, *U. S.*
(Judge Advocate, or proper officer.)

I certify that _____, a civilian in Government empley, has been in attendance as a witness before the _____ court martial, of which I am _____, in session at _____, from _____, 19__, to _____, 19__, inclusive, and that he was duly summoned thereto from _____, and that he was (_____) furnished transportation by the Government for (_____) this journey.

_____,
_____, *U. S.*
(Judge Advocate, or proper officer.)

To _____,
Pay _____, *U. S. Navy:*

You are hereby directed to pay the cost of travel and expenses, for civilian witness whose account is set forth above, in the sum of _____ ($_____).

_____,
_____, *U. S. Navy, Commanding.*

Paid by check No. _____, on assistant treasurer at _____, dated _____, 19__, for $_____, in favor of _____.

_____,
_____ *Pay* _____, *U. S. N.*

(Receipt to be signed only when payment is made in cash.)

Received _____, 19__, of _____, _____ Pay _____, U. S. N., in cash, _____ dollars, in full of above account.

_____,
Witness.

(Certified copy of order convening the court and the subpœna must be attached to this voucher.)

Itemized statement of traveling expenses, and other expenses incurred under stress of urgent or unforeseen public necessity.

(Fill in form on this voucher showing how transportation requests were used.)

Date.	Character of expenditures.	Sub-voucher No.	Amount.	
			Dollars.	Cents.
19...				
	Total account claimed			

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Memorandum of travel performed upon transportation requests.

No. of transportation request.	Date of travel.	From—	To—	Via R. R.	Dollars.	Cents.
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....

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CERTIFICATE OF COURT TO DISTRICT ATTORNEY IN CASE OF A CONTUMACIOUS CIVILIAN WITNESS.

COURT-MARTIAL ROOM,
Navy Yard, New York, N. Y., June —, 19—.

The United States District Attorney for the Southern District of New York.

SIR: A naval general court-martial was convened at the navy yard, New York, situated in Brooklyn, State of New York, by an order of the Secretary of the Navy (or as the case may be). A certified copy of said order is hereto appended, marked "———"; also certified copies of subsequent modifications thereof are hereto appended, marked "———" and "———."

In the case of the United States against ——— ———, U. S. Navy, transmitted to the court by a letter, certified copy hereto appended, marked "———," a material witness for the prosecution (defense), L——— J. B———, residing at ———, within this State (Territory or District), was duly subpœnaed to appear as such witness before said court martial; certified copy of subpœna (*duces tecum*) and of the return of service thereon hereto appended, marked "———."

Upon being duly sworn as a witness in the aforesaid case, and in the course of his testimony therein, the said L——— J. B——— was asked the following question by counsel for the defense (judge advocate): Q. * * *?

The witness declined to answer the question, and, having been paid (tendered) his lawful fee and mileage; was then cautioned and informed as to the penalty for persisting in his refusal to answer the said question, which was again put to him. The witness again declined to answer, and gave the following reason for his refusal: "———." (Enter reason of witness in full, and verbatim if possible.)

The foregoing facts are certified to you as correct for your action thereon, in accordance with the provisions of section 12 of the act of February 16, 1909 (35 Stat., 621).

By order of the court:

A——— B. C———,
Captain, U. S. Navy, President.

Attest:

V——— V. W———,
First Lieutenant, U. S. Marine Corps, Judge Advocate.

Object of certificate.—The certification of facts is for the information of the district attorney and to enable him to prepare the proper information charging the witness with the offense, and, except in two cases mentioned below, the accuracy and precision required in an indictment is not essential.

Precise question set out.—The first exception referred to above is where the witness refuses to answer a question. In such a case the precise question pro-

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pounded to him should be set out, likewise the reason, if any, which the witness gives for not answering.

Refusal to obey subpœna duces tecum.—In case the contumacy is in the refusal of the witness to produce a book, paper, or document the second exception referred to above occurs. In such a case the witness, having been subpœnaed to produce such book, etc., the book, paper, or document should be particularly and certainly described and identified, which description should also correspond with that given in the subpœna duces tecum. The reason for the refusal of the witness should also be accurately set forth.

Substance of certificate.—The certificate should contain the following information: Copy of order convening court, with copies of any subsequent modifications. Copy of subpœna served on the witness, showing the place from which summoned and that such place was within the State, Territory, or District within which the court is held. Facts as to (1) neglect to appear, (2) refusal to appear, (3) refusal to qualify as a witness, (4) refusal to testify, or (5) refusal to produce documentary evidence, all to be definitely but succinctly stated. Also a statement that the witness was paid or tendered his lawful fee and mileage.

Further information.—With a proper observance of the particularity, accuracy, and precision in the two cases above referred to, the matter indicated in the foregoing paragraph is sufficient to meet the requirements of the law. Any further information can readily be furnished if needed by the district attorney.

Record and signature.—The record of the proceedings shall state the facts relative to any case of contumacy, and that the court has ordered the facts to be certified to the district attorney. The formal certificate of facts, stating that it is made "by order of the court," will be sufficiently signed if done officially by the president of the court and attested by the judge advocate.

(Copy appended to record.)

130; 174; Act of Feb. 16, 1909, under 42 A. G. N.

RECEIPT OF ACCUSED FOR COPY OF RECORD.

GENERAL COURT MARTIAL ROOM,
Navy Yard, Philadelphia, Pa., July —, 19—.

I hereby acknowledge the receipt of a copy of the record of proceedings of my trial by general court-martial held this date (*or, as the case may be.*)

———— ————,
Seaman, U. S. Navy.

(*Appended to record.*)

366 to 368

WAIVER OF THE ACCUSED OF THE RIGHT TO COPY OF RECORD.

GENERAL COURT MARTIAL ROOM,
Navy Yard, Philadelphia, Pa., July —, 19—.

Without any coercion whatever, I hereby waive my right to a copy of the record of the proceedings of my trial by general court-martial held this date (*or, as the case may be*).

A———— D. B————,
Private, U. S. Marine Corps.

(*Appended to record.*)

368 to 369

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LETTER INFORMING CONVENING AUTHORITY THAT COURT HAS FINISHED ALL BUSINESS BEFORE IT.

COURT MARTIAL ROOM,
Navy Yard, New York, July —, 19—.

From: Captain A——— B. C———, U. S. Navy, president general court-martial, navy yard, New York.
To: The Secretary of the Navy.
Subject: Adjournment of court after the completion of all business before it.

1. The general court-martial of which I am president, having finished all the business before it, has adjourned to await your further instructions.

241

ORDER DISSOLVING COURT.

NAVY DEPARTMENT,
Washington, July —, 19—.

From: The Secretary of the Navy.
To: Captain A——— B. C———, U. S. Navy, president general court-martial, navy yard, New York.
Subject: Dissolving general court-martial.

1. The general court-martial of which you are president is hereby dissolved.

2. You will notify the other members of the court and the judge advocate accordingly.

389

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II.

SUMMARY COURTS-MARTIAL.

(Chapter XI—Part I.)

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INCIDENTS OF A TRIAL BY SUMMARY COURT-MARTIAL.

1. Court meets.
2. Accused introduced.
3. Accused signifies wishes as to counsel.
4. Counsel, if any, introduced.
5. Precept and other documents relating to organization read.
6. Challenge of members.
7. Members sworn by recorder.
8. Recorder sworn by senior member.
9. Has accused received copy of specification(s)? If so, when?
10. Specification(s) pronounced in due form and technically correct.
11. Accused asked if he is ready for trial.
12. All witnesses not otherwise connected with the trial directed to withdraw.
13. Specification(s) read by recorder.
14. Arraignment.
15. Preliminary motion, if any.
16. Plea to issue.
17. Prosecution begins.
18. Prosecution rests.
19. Defense begins.
20. Defense rests.
21. Rebuttal.
22. Surrebuttal.
23. Statements.
24. Trial finished.
25. Court cleared for deliberation on finding.
26. Recorder recalled to record finding.
27. Recorder informs court as to previous convictions.
28. Court opened to receive any record of previous convictions.
29. Court cleared for deliberation on sentence.
30. Recorder recalled to record sentence.
31. Recommendation for clemency, if any.
32. Court opened.
33. Adjournment.

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CASE OF
J———Z. S———,
SEAMAN, U. S. NAVY,
JULY 17, 19—.

85

RECORD OF PROCEEDINGS

OF A

SUMMARY COURT-MARTIAL

CONVENED ON BOARD

THE U. S. S. WYOMING.

82 to 92; 454

ORDER CONVENING A SUMMARY COURT-MARTIAL.

402 to 403

U. S. S. WYOMING,
Hampton Roads, Va., July —, 19—.

From: Commanding Officer.
To: Lieutenant A——— R. K———, U. S. Navy.
Subject: Convening summary court-martial.

1. A summary court-martial is hereby ordered to convene on board this vessel on Friday, July —, 19—, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court will be constituted as follows:

Lieutenant A——— R. K———, U. S. Navy; Lieutenant J——— M. D———, U. S. Navy; and First Lieutenant J——— H. R———, U. S. Marine Corps, members, and Ensign J——— H. R———, U. S. Navy, recorder.

404 to 409

SPECIFICATION OF AN OFFENSE (SPECIFICATIONS OF OFFENSES) PREFERRED AGAINST ———.

Specification———

* * * * * * *

Approved, July —, 19—.

To be tried before the summary court-martial of which Lieut. ———— United States Navy, is senior member.

———— ————,
Captain, United States Navy,
Commanding, U. S. S. Wyoming.

411

FIRST DAY.

(*If case covers more than one day.*)

U. S. S. WYOMING,
Hampton Roads, Va., Friday, July 17, 19—.

The court met at 10 a. m.

401

Present:

Lieutenant A——— R. K———, U. S. Navy;
Lieutenant J——— M. D———, U. S. Navy; and
First Lieutenant G——— B. W———, U. S. Marine Corps, members; and
Ensign J———H. R———, U. S. Navy, recorder.

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Var. 1.—Lieutenant J——— M. D———, U. S. Navy, a member, was absent on account of illness (*or other cause*), and, as the court was reduced below the number authorized by law, it adjourned until 10 a. m. to-morrow, Saturday.

Var. 2.—The court, being reduced below the number authorized by law, informed the convening authority to that effect, and then took a recess until 11.30 a. m. the same date, when it reconvened. Present: Lieutenant A——— R. K———, U. S. Navy; First Lieutenant G——— B. W———, U. S. Marine Corps, members, the recorder; and Ensign T——— S———, U. S. Navy, appointed a member by the convening authority, *vice* Lieutenant J——— M. D———, U. S. Navy, relieved.

The accused entered and stated that he did not wish counsel.

423

Var. 1.— ——— entered and requested that Ensign L——— N———, U. S. Navy, act as his counsel. (Ensign N——— entered.)

Var. 2.—The accused was informed that his request to have Ensign L——— N——— act as his counsel was not approved for the reason that (*give reason*); he then requested that Lieutenant O——— P———, U. S. Navy, act as his counsel. Lieutenant P——— entered. *Or*, He thereupon requested that counsel be detailed for him, and the court so notified the convening authority and took a recess until 1 p. m. the same date, when it reconvened. Present: All the members, the recorder, and the accused. Ensign ———, having been detailed as counsel for accused, reported as such.

424

The recorder read the precept (and modifications thereof), original hereto prefixed, marked "A."

Var. 1.— ——— original prefixed to the record in the case of M——— R. S———, private, U. S. Marine Corps.

Var. 2.— ——— and an order relating thereto, prefixed hereto, marked "——."

409

The accused stated that he did not object to any member.

Var.—See variations under general court-martial, p. 345.

427; 277 to 282

Each member and the recorder were duly sworn.

428 to 431

The accused stated that he had received a copy of the specification(s) preferred against him on July —, 19—.

Var.—See variations under general court-martial, p. 346.

410

The recorder asked the accused if he had any objection to make to the specification(s).

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The accused replied in the negative.

Var.—See variations under general court-martial, p. 346.

414; 235

The court was cleared.

258

The court was opened. All parties to the trial entered, and the senior member announced that the court found the specification(s) in due form and technically correct.

Var.—See variations under general court-martial, pp. 346–347.

414; 235

The accused stated that he was ready for trial.

410

Var.—See variation under general court-martial, p. 347.

432

No witnesses not otherwise connected with the trial were present.

140

Var.—See variations under general court-martial, p. 347.

The recorder read the specification(s), original prefixed, marked "———," and arraigned the accused as follows:

433 to 434

Q. J——— Z. S———, seaman, U. S. Navy, you have heard the specification preferred against you; how say you to the specification, guilty or not guilty?

A. Not guilty (guilty) (guilty except as to the words "——— ——— ——— ———," to which words, not guilty) (the accused stood mute).

Var. 1.—Q. ———, you have heard the specifications preferred against you; how say you to the first specification, guilty or not guilty?

A. * * *

Q. To the second specification, guilty or not guilty?

A. * * *

436; 301 to 310

Var. 2.—When accused makes a preliminary motion before pleading to the issue.—See variation under general court-martial, p. 348.

435; 294 to 300

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When applicable to the plea.—The accused was duly warned as to the effect of his plea and persisted therein (*or*, withdrew his plea of guilty and substituted therefor a plea of not guilty).

306 to 308

Var.—When applicable to the plea.—The court was cleared. The court was opened. All parties to the trial entered, and the senior member announced that the court decided to reject the plea of the accused, who was advised by the recorder to withdraw his former plea and substitute therefor a plea of not guilty. The accused declined to change his plea and the recorder was directed by the court to proceed as though a plea of not guilty had been entered.

310

The prosecution began.

205

Var.—The prosecution offered no evidence.

A witness for the prosecution entered and was duly sworn.

430

Var.—A member (recorder) was called as a witness for the prosecution and was duly sworn.

139

Examined by the recorder:

1. Q. State your name, rate (rank), and present station.

A. *John W. Smith*, boatswain's mate, second class, U. S. Navy, stationed on the U. S. S. *Wyoming*.

Var.—(In case of a civilian witness):

1. Q. State your name, residence, and occupation.

2. Q. If you recognize the accused, state as whom.

A. I recognize him as J——— Z. S———, seaman, U. S. Navy, stationed on the U. S. S. *Wyoming*.

143

3. Q. * * *.

A. * * *.

142

Cross-examined by the accused (counsel):

151

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7. Q. * * *.
A. * * *.

(*See further steps in examination of witness under general court-martial, p. 350.*)

141

Neither the recorder, the accused, nor the court desired further to examine this witness.

154

The witness verified his testimony (was duly warned) and withdrew.

175 to 177; 140

Var.—See variations under general court-martial, p. 351.

A witness for the prosecution entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rank, and present station.
A. J——— A. R———, lieutenant, U. S. Navy, stationed on the U. S. S. *Wyoming*.
2. Q. As whom do you recognize the accused?
A. As J——— Z. S———, seaman, U. S. Navy.
3. Q. * * *
A. * * *

Neither the accused nor the court desired to question this witness.

154

The witness verified his testimony (was duly warned) and withdrew.

* * *

The prosecution rested. (*Provided the prosecution has offered evidence.*)

The defense began.

205

Var.—The accused did not desire to offer any evidence in his defense or to make a statement (see variations, p. 395).

A witness for the defense entered and was duly sworn.

Examined by the recorder:

143

1. Q. State your name and rank.
A. M——— G. R———, lieutenant, U. S. Navy.
2. Q. As whom do you recognize the accused?
A. As J——— Z. S———, seaman, U. S. Navy.

Examined by the accused (counsel):

142

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3. Q. * * *
A. * * *

(*See further steps in examination of witness for defense under general court-martial, p. 355.*)

141

Var.—In case of contempt.—The law is not construed as extending the authority to punish for contempt to a summary court-martial or deck court (see art. 42, A. G. N., and act of Feb. 16, 1909, quoted thereunder). In case of contempt, therefore, the court shall report the facts to the convening authority for such further action as the latter may deem appropriate.

170 to 172

* * *

The accused was, at his own request, duly sworn as a witness in his own behalf.

138

Examined by the recorder:

1. Q. Are you the accused in this case?
A. * * *

Examined by the accused (counsel):

2. Q. State the facts concerning the offense with which you are charged.
A. * * *
3. Q. * * *
A. * * *

161

* * *

The defense rested. (*Provided the defense has offered evidence.*)

205

The rebuttal began. (*In case there is a rebuttal.*)

206

A witness for the prosecution in rebuttal entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rate, and present station.
A. J——— R. G———, seaman, U. S. Navy.
2. Q. As whom do you recognize the accused?
A. * * *

* * *

The rebuttal ended.

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The surrebuttal began. (*In case there is a surrebuttal.*)

207

Lieutenant M——— G. R———, U. S. Navy, a witness for the defense, was recalled as a witness for the defense in surrebuttal, and warned that the oath previously taken by him was still binding.

Examined by the accused (counsel):

1. Q. * * *

A. * * *

* * *

The surebuttal ended.

The accused did not desire to make a statement.

438; 311

Var. 1.—The accused (counsel) made an oral statement (argument) as follows:

313 to 315

Var. 2.—The accused made an oral statement, the substance of which is appended, marked "Exhibit No. —."

316

Var. 3.— ———. The court was cleared. The court was opened, and the senior member announced that the court considered the statement of the accused to be inconsistent with his plea of "Guilty." The conflicting plea and statement were brought to the attention of the accused.

The accused adhered to the facts set forth in his statement.

The court directed the recorder to proceed with the trial as if the plea of not guilty had been entered.

310; 312

The trial was finished.

The court was cleared.

The recorder was recalled and directed to record the following finding(s):

"The specification proved."

Var. 1.—"The first specification proved."

Var. 2.—"——— proved by plea."

Var. 3.—"——— not proved, and the court does, therefore, acquit him, the said J——— Z. S———, seaman, United States Navy, of the offense specified."

Var. 4.—"——— proved in part; proved except the words '———,' which words are not proved (and for the excepted words the court substitutes the words '———,' which words are proved)."

439; 318 to 325

The recorder stated that he had (no) record of previous convictions, and that the pay of the accused is $——— a month.

440; 326

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(*In case there is any record of previous convictions*):

The court was opened, and all parties to the trial entered. The senior member announced that the court was ready to receive any record of previous convictions.

Such record having been submitted to the accused and there being no objection, the recorder read from the current service record of the accused an extract showing previous conviction(s), copy appended, marked "Exhibit No. —."

Var.—See variation under general court-martial, p. 360.

326 to 334

The court was cleared.

The recorder was recalled and directed to record the sentence of the court as follows:

"The court, therefore, sentences him, J——— Z. S———, seaman, U. S. Navy, to solitary confinement on bread and water for eight (8) days, with full ration every third (3d) day, and to lose pay amounting to thirty (30) dollars."

A——— R. K———,
Lieutenant, U. S. Navy, Senior Member.
J——— M. D———,
Lieutenant, U. S. Navy, Member.
G——— B. W———,
First Lieutenant, U. S. Marine Corps, Member.
J——— H. R———,
Ensign, U. S. Navy, Recorder.

441 to 452; 336; 354 to 356

In consideration of his previous good record (*or whatever the reason may be upon which the recommendation is based*), we recommend ——— ———, ———, U. S. Navy, to the clemency of the reviewing authority.

J——— M. D———,
Lieutenant, U. S. Navy, Member.
G——— B. W———,
First Lieutenant, U. S. Marine Corps, Member.

453; 357

The court was opened and proceeded with the trial of ——— ———, ———, U. S. ———.

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Var. 1.—The court then adjourned to await orders from the convening authority.

Var. 2.— ——— adjourned to meet ———.

A——— R. K———,
Lieutenant, U. S. Navy, Senior Member.
J——— H. R———,
Ensign, U. S. Navy, Recorder.

454; 365

U. S. S. WYOMING,
Hampton Roads, Va., July —, 19—.

From an examination of J——— Z. S———, seaman, U. S. Navy, and of the place where he is to be confined, I am of the opinion that the execution of the above sentence would (not) produce serious injury to his health.

B——— N. J———,
Surgeon, U. S. Navy, Senior Medical Officer on Board.

454; 364

ACTION OF CONVENING AUTHORITY ON THE RECORD.

U. S. S. WYOMING,
Hampton Roads, Va., July —, 19—.

The proceedings, finding(s), and sentence in the foregoing case of J——— Z. S———, seaman, U. S. Navy, are approved.

D——— B. W———,
Captain, U. S. Navy, Commanding U. S. S. Wyoming
(and Senior Officer Present).

——— ———,
Colonel, U. S. Marine Corps,
Commanding ——— Regiment, U. S. Marine Corps
(and Senior Officer Present).

458; 459

Var. 1.—The service record of J——— Z. S———, seaman, U. S. Navy, shows that he has served in the Navy ——— years and ——— months. During his current enlistment, beginning March —, 19—, he has committed the following offenses: March —, 19—, forty-eight hours over liberty; May —, 19—, clothes in lucky bag; June 18, 19—, absent from quarters; July —, 19—, shirking. (During his current enlistment, beginning ———, he has committed no offense prior to the one for which he has been tried in this case.)

The proceedings, finding(s), and in view of the above, the sentence in the foregoing case are approved (*or as the case may be*).

463

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Var. 2.—The proceedings, finding(s), and sentence in the foregoing case of ——— ——— are approved. That part of the sentence which involves a bad conduct discharge is remitted on condition that ——— ——— during a period of six months (*if three months' loss of pay has been adjudged*) conducts himself in such a manner as in the opinion of his commanding officer warrants his further retention in the service; otherwise he is to be discharged with a bad-conduct discharge at the discretion of his commanding officer at any time during said period. The loss of pay adjudged is remitted subject to the conditions specified in article I–4893, Naval Instructions, 1913.

Var. 3.—The proceedings, finding(s), and sentence in the foregoing case of J——— Z. S———, seaman, U. S. Navy, are approved, but the period of confinement is reduced to ——— days. (——— but in view of the recommendation to clemency, the loss of pay is reduced to ——— dollars.) (——— but in view of the opinion of the medical officer, recorded above, the solitary confinement is remitted and the accused will be released from confinement and restored to duty.) (——— but the loss of pay is remitted.)

Var. 4.—The proceedings and finding(s) in the foregoing case of J——— Z. S———, seaman, U. S. Navy, are approved. The sentence is disapproved (*state reason*). The accused will be released from confinement and restored to duty.

Var. 5.—The proceedings, finding(s), and sentence in the foregoing case of ——— ———, ———, U. S. Navy, are disapproved (*state reasons*).

Var. 6.—The proceedings, finding(s), and acquittal in the foregoing case of ——— ———, ———, U. S. Navy, are approved. He will be released from confinement and restored to duty.

Var. 7.—The proceedings in the foregoing case of ——— ———, ———, U. S. Navy, are approved. The finding(s) and acquittal are disapproved. He will be released from confinement and restored to duty.

458 to 462

Revision of Record.—If, in the opinion of the convening authority, it is necessary to return the record to the court for revision, he shall take such action prior to his final action thereon. See form under general courts-martial, pp. 363–365.

456 to 457

ACTION OF THE REVIEWING AUTHORITY.

(When convening authority is not senior officer present.)

459

U. S. S. WYOMING,
Hampton Roads, Va., July —, 19—.

The proceedings, finding(s), and sentence in the foregoing case of ——— ———, seaman, U. S. Navy, are approved.

Var. 1.—The proceedings, finding(s), and sentence, as mitigated, in the foregoing case of ——— ———, ———, ———, are approved.

Var. 2.—The proceedings and finding(s) in the foregoing case of ——— ———, ———, ———, are approved. The sentence is disapproved (for the reason that ———). (The sentence is approved, but the loss of pay is remitted.)

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(The sentence is approved, but the period of confinement is reduced to ——— days) (*or as the case may be.*)

———— ————,
Captain, U. S. Navy, Commanding U. S. S. ———,
Immediate Superior in Command.

———— ————,
Rear Admiral, U. S. Navy,
Commander Battleship Division —, U. S. Atlantic Fleet,
Immediate Superior in Command.

———— ————,
Brigadier General, U. S. Marine Corps,
Commanding — Brigade, U. S. Marine Corps,
Immediate Superior in Command.

459 to 462

Published.

D——— C. B———,
Commander, U. S. Navy, Executive Officer.

Loss of pay, $—— checked.

N——— W. D———,
Paymaster, U. S. Navy.

Var.—Loss of pay, $———, will be deducted in accordance with article 4893, U. S. Naval Instructions, 1913.

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III.

DECK COURTS.

(Chapter XII—Part I.)

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Deck Courts.

RECORD OF DECK COURT NO. ——— ———.

(*New series each calendar year.*)

C———, A——— B., seaman, U. S. Navy.
(*Name of accused, surname first.*)

Lieutenant D——— E. F———, U. S. Navy, is hereby ordered as a deck court to try the above-named man for the following offense:

Var.—In case the commanding officer is the deck court: Trial of the above-named man for the following offense:

468 to 469

Specification: In that A——— B. C———, seaman, U. S. Navy, having been granted liberty on March 25, 1917, until 10 a. m., March 26, 1917, did, upon the expiration of said liberty, fail to return to his ship and did remain absent from his station and duty without leave until 10 p. m., March 26, 1917.

470 to 471

R——— A. V———, yeoman second class, U. S. Navy, will act as recorder.

474

J——— —. K———,
Commander, U. S. Navy, Comdg.

467

I consent to trial by deck court as above.

A——— B. C———,
Seaman, U. S. Navy.

476

Date of present enlistment, ———. Pay per month, $——.

Record of previous convictions: Oct. 16, 1916, disorderly conduct, S. c. m., sentence: S. c., b. w., 5 d.; l. p. $12. App'd. by con. auth.

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Oct. 18, 1916; by Im. sup. in com. Oct. 19, 1916. (Or, app'd. by con. auth. and S. O. P. Oct. 18, 1916.)

Var.—None.

483; 327 to 330

Witnesses: (*When record of previous convictions is objected to.*)

332

U. S. S. ———, March 28, 1917.

472; 473; 475; 478

The accused was arraigned and pleaded as follows: Not guilty (guilty).

481

The following witnesses appeared for the prosecution:

The following witnesses appeared for the defense:

479; 481

In case of contempt.—See variation under summary court-martial, p. 394.

Finding: "The specification proved (proved by plea)."

Var.—"The specification not proved and the court acquits the said ——— of the offense specified."

482; 439

Sentence: To lose pay amounting to sixteen dollars and thirty cents ($16.30).

Previous convictions considered (*if any have been considered in adjudging sentence.*)

483 to 485

D——— E. F———,
Lieutenant, U. S. Navy, Deck Court.
(*Where convening authority does not act at deck court.*)

469

When sentence involves solitary confinement on diminished rations, or on bread and water, for more than 10 days.—Having examined accused and place of his confinement, I am of opinion that execution of sentence would (not) produce serious injury to his health.

———, ———,
Surgeon, U. S. Navy.

490; 364

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The sentence is approved and the accused informed this day (*date inserted here unless same as previously recorded*). (That portion of the sentence involving loss of pay is remitted subject to the conditions specified in art. 4893, Naval Instructions.)

J—— J. K——,
Commander, U. S. Navy, Comdg.

486 to 487

Var.—Where convening authority acts as deck court.—The accused informed this day (*date inserted here unless same as previously recorded*). (That portion of the sentence involving loss of pay is remitted subject to the conditions specified in art. 4893, Naval Instructions.)

——— ———,
Lieutenant, U. S. Navy, Comdg.,
The only officer of the required rank attached to the vessel (command).

——— ———,
Ensign, U. S. Navy, Comdg.,
The only officer attached to the vessel (command).

——— ———,
Lieutenant (j. g.), U. S. Navy, Comdg.,
The only officer attached to the vessel (command) authorized to act as deck court officer.

469; 486 to 487

Loss of pay, $—— checked.

Var.—Loss of pay, $——, will be deducted in article 4893, Naval Instructions.

——— ———,
U. S. ———.

491; 464

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IV.

COURTS OF INQUIRY.

(Chapter XIII—Part I.)

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RECORD OF PROCEEDINGS

OF A

COURT OF INQUIRY

CONVENED AT

THE NAVY YARD, NEW YORK,

BY ORDER OF

THE SECRETARY OF THE NAVY.

Var.—Convened on board the U. S. S. ———, by order of the commander in chief, U. S. Atlantic Fleet (commander, cruiser force, U. S. Atlantic Fleet).

498

TO INQUIRE INTO ——— ———.

494 to 497

AUGUST 15, 19—.

82 to 92; 541 to 542

Precept: *See forms*, pp. 417–420.

539

FIRST DAY.

NAVY YARD, NEW YORK,
Var.—U. S. S. ———, OFF ———,
Friday, August 15, 19—.

The court met at 10 a. m.

516

Present:
Captain A——— B. C———, U. S. Navy,
Commander D——— E. F———, U. S. Navy, and

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Commander G——— H. K———, U. S. Navy, members; and Lieutenant L——— N———, U. S. Navy, judge advocate.

499 to 501

Var.—Absent: Commander G——— H. K———, U. S. Navy, member. The judge advocate read a medical certificate, appended, marked "———," accounting for the absence of Commander K——— (was unable to account for his absence, *or as the case may be*).

The court addressed a letter to the convening authority, copy appended, marked "———," and then, at — a. m., took a recess until — p. m. (*or*, the court then, at — a. m., adjourned until — a. m., to-morrow, Saturday, to await the arrival of the absent member).

501

The judge advocate introduced F——— E. D——— as stenographer (clerk), stating the authority whereby he was appointed as such.

514

The court was closed and the judge advocate read the precept (and modifications thereof) original(s) prefixed, marked "———" (and "———").

518; 520

All matters preliminary to the inquiry having been determined, and the court having decided to sit with open doors, the court was opened.

Var. — ——— the court announced that, in obedience to orders of the convening authority, it would sit with closed doors. (The court decided to sit with closed doors.)

519

Commander C——— P. Q———, U. S. Navy, commanding the U. S. S. ———, a defendant, entered, and, with the permission of the court, introduced Lieutenant R——— S. T———, U. S. Navy, as his counsel.

507 to 508

Var. 1.—Commander L——— M———, U. S. Navy, Lieutenant N——— O———, U. S. Navy, and Ensign P——— Q———, U. S. Navy, entered as interested parties.

Var. 2.—The court received from ——— ———, an interested party, a communication, which was read and appended, marked "———," stating that he was unable to be present, owing to ———. (*Give reason; if illness, a medical certificate must be presented, read, and appended. This communication may be made personally by any competent person.*)

The court then, at — p. m., adjourned until — a. m. to-morrow, Saturday.

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Var. 3.— ——— ———, an interested party, entered and stated that he did not wish counsel (that he waived his right to be present at the inquiry, and thereupon withdrew).

Var. 4.— ——— ———, an interested party, entered and asked permission to introduce Lieutenant U——— V. W———, U. S. Navy, as counsel. At the request of a member (the judge advocate), the court was cleared. The court was opened. ——— ——— entered and was informed that, while he was at liberty to designate some other person, his request to have Lieutenant U——— V. W———, U. S. Navy, act as his counsel was not approved for the reason that (*give reason*).

Var. 5.—The complainant, Captain X——— Y. Z———, U. S. Navy, entered. With the permission of the court, the complainant introduced Major B——— C. D———, U. S. Marine Corps, as his counsel.

506 to 510

The judge advocate read the precept.

521

The defendant (interested party) (and the complainant) stated that he (they) did not object to any member.

In case of challenge.—See procedure under general court-martial, p. 345.

502; 523

Each member, the judge advocate, and the stenographer (clerk) (interpreter) were duly sworn.

528 to 532

If postponement be requested.—The defendant (interested party) (complainant) (judge advocate) applied for a postponement of the inquiry on the ground (*give reasons*). The court was cleared. The court was opened, and the president announced that the inquiry would be postponed until ——— (that the inquiry would proceed) (——— that it would await the action of the convening authority, who was informed that the defendant (*or as the case may be*) desired a postponement of the inquiry until ——— for the reason (*give reason*).

517

No witnesses not otherwise connected with the inquiry were present.

Var. 1.—In accordance with the direction of the court, all witnesses not otherwise connected with the inquiry withdrew.

Var. 2.—The court then, at ——— a. m., took a recess until — p. m., when it reconvened on board the U. S. S. ———. Present: All the members and the parties to the inquiry.

All the (surviving) officers and men of the U. S. S. ——— were mustered on the quarter deck of that vessel. The president explained the purpose of the court and the rights of all persons concerned, and duly administered to them the oath of witnesses (except to ——— and ———, who were absent from the vessel. (*Give reason.*))

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The official report of Commander L——— M———, U. S. Navy, containing the narrative of the loss of the U. S. S. ——— on August ——, 19—, was then read by the judge advocate, original hereto appended, marked "———."

The following questions were then put to the commanding officer by the court:

Q. Is the narrative just read to the court a true statement of the loss of the U. S. S. ———, on August ——, 19—?

A. * * *

Q. Have you any complaint to make against any of the officers or men of that vessel on that occasion?

A. * * *

The following questions were then put by the court to the (surviving) officers and crew of the U. S. S. ———, and they were instructed by the president that if they had anything to say in answer to the questions propounded, they should step to the front.

Q. Have you any objection to make to the narrative just read, or anything to lay to the charge of any officer or man concerning the loss of the U. S. S. ———, on August ——, 19—?

A. The officers and men answered "No," and no one stepped to the front (*or as the case may be*).

All the officers and such of the crew as filled positions of special responsibility on the occasion referred to were informed by the president of their status as interested parties and of their right to be present during the sessions of the court, to offer evidence, and to cross-examine witnesses, should they so desire.

The court then, at — a. m., took a recess until — p. m., at which time it reconvened at the navy yard, New York (*or, as the case may be*).

Present: All the members and the parties to the inquiry.

554 to 555

Lieutenant C——— B. A———, U. S. Navy, a witness called by the judge advocate, entered and was duly sworn.

530

Examined by the judge advocate:

1. Q. * * *

A. * * *

Examined by the complainant (*if there be one*):

20. Q. * * *

A. * * *

Cross-examined by ———, defendant (interested party) (counsel):

506 to 508

25. Q. * * *

A. * * *

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Reexamined by the judge advocate:
40. Q. * * *
A. * * *
Examined by the court:
52. Q. * * *
A. * * *

None of the parties to the inquiry desired further to examine this witness; he verified his testimony (was duly warned) and withdrew.

154; 175 to 177

The court then, at — p. m., adjourned until — a. m., to-morrow (Saturday).

SECOND DAY.

NAVY YARD, NEW YORK,
Saturday, August 16, 19—.

The court met at 10 a. m.

Present: All the members and the parties to the inquiry (except———).

The record of proceedings of yesterday (the first day of the inquiry) was read and approved.

Lieutenant F——— E. B———, U. S. Navy, a witness called by the judge advocate, entered and was duly sworn.

Examined by the judge advocate:
1. Q. * * *
A. * * *

* * *

None of the parties to the inquiry desired further to examine this witness; he verified his testimony and withdrew.

Var. 1.—The (surviving) officers and men of the U. S. S. ———, who were absent yesterday, were called before the court. The purpose of the court and their rights were explained to them and they were duly sworn. The same questions were asked them as had been propounded to the other members of the crew and the same instructions were given; no one had anything to urge (*or, as the case may be*).

All the officers and such of the crew as filled positions of special responsibility were informed of their status as interested parties and of their right to be present during the sessions of the court, to offer evidence, and to cross-examine witnesses if they so desire.

Var. 2.—Lieutenant G——— H. R———, U. S. Navy, who had been directed to work up the dead reckoning of the U. S. S. ———, was called as a witness and duly sworn.

552

Var. 3.—The court was cleared. The court was opened. All parties to the inquiry entered, and the president announced that the court would adjourn to the scene of the accident (explosion) (fire) (*or as the case may be*).

All the members and the parties to the inquiry assembled (*at such place as the casualty occurred*), and made an inspection of ———.

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P——— J. W———, chief turret captain, U. S. Navy, was called as a witness by the judge advocate, and duly sworn.

Examined by the judge advocate: *etc.*

* * * * * * *

All the members and the parties to the inquiry returned to ———, where the court was reassembled.

516

The judge advocate stated that he had no more witnesses to call.

Ensign G——— F. E———, U. S. Navy, a witness called by ———, defendant (interested party), entered and was duly sworn.

513

Examined by ———, defendant (interested party).

1. Q. * * *

A. * * *

Cross-examined by the judge advocate:

8. Q. * * *

A. * * *

Cross-examined by the complainant:

12. Q. * * *

A. * * *

Examined by the court:

16. Q. * * *

A. * * *

None of the parties to the inquiry desired further to examine this witness; he verified his testimony and withdrew.

* * *

Var. 1.—At this stage of the proceedings it appeared to the court that Lieutenant R——— S———, U. S. Navy, was an interested party. He was, accordingly, called before the court and advised to that effect, and of the testimony that seemed to implicate him. He stated that he did not object to any member of the court and was informed of his right to be present, to have counsel, to offer evidence, and to cross-examine witnesses if he so desired.

511

Var. 2.—At this stage of the proceedings it appeared to the court that ———, an interested party, became a defendant, and he was accordingly informed of this change in status.

507

The court then, at — a. m., took a recess until — p. m., at which time it reassembled.

361

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Present: All the members and parties to the inquiry.

Commander ———, U. S. Navy, a defendant, requested that he be sworn as a witness. His request was granted and he was duly sworn, having been informed by the president that his examination would be governed by the same rules as govern the examination of an accused who takes the stand at his own request in a trial by court-martial.

Examined by defendant (counsel).

* * * * * * *

Cross-examined by the judge advocate:

* * * * * * *

Cross-examined by the complainant (counsel):

* * * * * * *

Examined by the court:

Var.—Commander ———, an interested party, requested (was called upon) to take the stand. He was duly sworn, and informed by the president of his right to decline to answer any questions which may tend to incriminate himself.

Examined by ———, interested party (or by judge advocate or court, depending upon whose instance witness was called):

* * * * * * *

512

None of the parties to the inquiry desired further to examine this witness; he verified his testimony and resumed his seat as defendant (interested party).

Neither the court, the judge advocate, nor any party to the inquiry desired to call any more witnesses.

Commander L——— M——— and Lieutenant R——— S———, U. S. Navy, each submitted a written statement, which statements were read and are appended, marked "———" and "———."

512

Var.—Counsel for ———, an interested party, made the following oral argument: ———.

The judge advocate then read a written argument, hereto appended, marked "———."

Var.—The judge advocate made the following oral argument:

526

The inquiry was finished, all parties thereto withdrawing.

The court, having thoroughly inquired into all the facts and circumstances connected with the allegations contained in the precept

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(loss *or* grounding of the U. S. S. ———) (death of ———) (collision between the U. S. S. ——— and the Old Dominion Line S. S. ———) (fire *or* accident *or* explosion on board the U. S. S. ———), and having considered the evidence adduced, finds as follows:—

527

FACTS.

(*Here state the facts found established, and, where applicable, which allegations of a complaint are sustained and which are not sustained.*)

534; 536

OPINION.

(*Here state opinion as required. If further proceedings are recommended against any person, state what proceedings and grounds therefor.*)

533; 535; 536

MINORITY REPORT.

(*Here insert minority report if there be one.*)

537

The record of proceedings of this second day of the inquiry was read and approved, the court being closed during the reading of so much thereof as pertains to the proceedings in closed court, and the court having finished the inquiry, then at —, adjourned to await the action of the convening authority.

———,
Captain, U. S. Navy, President.

———,
Lieutenant, U. S. Navy, Judge Advocate.

540

In case of revision:—543.

NAVY DEPARTMENT,
Washington, August —, 19—.

The findings, opinion, and recommendation of the court of inquiry in the foregoing case are approved (disapproved).

———,
Secretary of the Navy.

Var.—The findings and recommendation of the court of inquiry in the foregoing case are approved. The department does not, however, deem it advisable to bring ——— ——— to trial by general court-martial, as recommended by the

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court, but will address a letter to him admonishing him as to his conduct in the matter (*or as the case may be*).

544

PRECEPT FOR COURT OF INQUIRY.

(*To inquire into a report of misconduct.*)

494.

NAVY DEPARTMENT,
Washington, August —, 19—.

To: Captain A——— B———, U. S. Navy, navy yard, ———, ———, via commandant.

Subject: Court of inquiry to inquire into alleged misconduct by Lieutenant X——— Y. Z———, U. S. Navy.

1. A court of inquiry, consisting of yourself as president, and of Commander D——— E. F———, U. S. Navy, and Lieutenant Commander G——— H. I———, U. S. Navy, as additional members, and of Lieutenant J——— K. L———, U. S. Navy, as judge advocate, is hereby ordered to convene at the navy yard, ———, ———, at 10 o'clock a. m. on Monday, August —, 19—, or as soon thereafter as practicable, for the purpose of inquiring into certain complaints made by Commander R——— S———, U. S. Navy, alleging misconduct on the part of Lieutenant X——— Y. Z———, U. S. Navy, in the following particulars: (*Here state clearly and concisely the allegations to be inquired into.*)

2. It is directed that the court notify Commander R——— S——— of the time and place of meeting of the court and that he will be a party to the inquiry in the status of complainant and will be afforded the rights of such party in accordance with the provisions of Naval Courts and Boards.

3. It is directed that the court notify Lieutenant X——— Y. Z——— of the time and place of meeting and that he will be a party to the inquiry in the status of defendant and will be afforded the rights of such party in accordance with the provisions of Naval Courts and Boards.

4. The court will thoroughly inquire into the matter hereby submitted to it and will include in its findings a full statement of the facts it may deem to be established, together with its opinion as to whether further proceedings should be had in the matter. If further proceedings are recommended the court will comply with the provisions of section 538, Naval Courts and Boards.

5. The commandant of the navy yard, ———, ———, is hereby directed to furnish the necessary clerical assistance for the purpose of assisting the judge advocate in recording the proceedings of this court of inquiry.

———, ———,
Secretary of the Navy.

503.

PRECEPT FOR A COURT OF INQUIRY.

(*To inquire into the circumstances attending a death.*)

496.

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NAVY DEPARTMENT,
Washington, August —, 19—.

To: Captain A——— B———, U. S. Navy, navy yard, ———, ———, via commandant.

Subject: Court of inquiry to inquire into the circumstances attending the death of ———, late fireman first class, U. S. Navy.

1. A court of inquiry, consisting of yourself as president, and of Commander D——— E. F———, U. S. Navy, and Lieutenant Commander G——— H. I———, U. S. Navy, as additional members, and of Lieutenant J——— K. L———, U. S. Navy, as judge advocate, is hereby ordered to convene at the navy yard, ———, ———, at 10 o'clock a. m. on Monday, August —, 19—, or as soon thereafter as practicable, for the purpose of inquiring into the circumstances attending the death of M——— N. O———, late fireman first class, U. S. Navy, attached to the U. S. S. ———.

2. The court will make a thorough investigation into all the circumstances connected with the death of the above-named man; and, in the conduct of same and report thereon, will be governed by the instructions contained in section 496 Naval Courts and Boards.

3. The court will include in its findings a full statement of the facts it may deem to be established, together with its opinion as to whether further proceedings should be had in the matter. If further proceedings are recommended, the court will comply with the provisions of section 533 Naval Courts and Boards.

4. The attention of the court is particularly invited to section 511 Naval Courts and Boards.

5. The commandant of the navy yard, ———, ———, is hereby directed to furnish the necessary clerical assistance for the purpose of assisting the judge advocate in recording the proceedings of this court of inquiry.

———, ———,
Secretary of the Navy.

503.

PRECEPT FOR COURT OF INQUIRY.

(To inquire into the condition of a vessel.)

497.

To: Commander C——— R———, U. S. Navy, navy yard, ———, ———, via commandant.

Subject: Court of inquiry to inquire into the condition of the U. S. S. ———.

1. A court of inquiry, consisting of yourself as president, of Naval Constructor ———, U. S. Navy, and Lieutenant ———, U. S. Navy, as additional members, and of Lieutenant ———, U. S. Navy, as judge advocate, is hereby ordered to convene at the navy yard, ———, ———, at 10 o'clock a. m. on Monday, August —, 19—, or as soon thereafter as practicable, for the purpose of inquiring into unsatisfactory conditions reported to exist on board the U. S. S. ——— in the following respects: (*Here state clearly and concisely the respects in which conditions are alleged to be unsatisfactory and are to be investigated.*)

2. The court will make a thorough inquiry into the conditions as set forth above and the responsibility therefor.

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3. It is directed that the court notify Commander ———, U. S. Navy, and Lieutenant ———, U. S. Navy, of the time and place of meeting of the court and that they will be parties to the inquiry in the status of interested parties at the outset, and will be afforded the rights of such parties in accordance with the provisions of Naval Courts and Boards.

4. The attention of the court is particularly invited to section 511, Naval Courts and Boards.

5. The court will include in its findings a full statement of the facts it may deem to be established, together with its opinion as to whether further proceedings should be had in the matter. If further proceedings are recommended the court will comply with the provisions of section 533, Naval Courts and Boards.

6. The commandant of the navy yard, ———, ———, is hereby directed to furnish the necessary clerical assistance for the purpose of assisting the judge advocate in recording the proceedings of this court of inquiry.

7. In addition to the original record of proceedings there shall be forwarded a partial copy covering material in accordance with section 541, Naval Courts and Boards.

———, ———,

Secretary of the Navy.

503.

PRECEPT FOR COURT OF INQUIRY.

(*To inquire into the grounding (loss) of a vessel.*)

546 to 555.

To: Captain ———, U. S. Navy, U. S. S. ———, via commander ——— Force, U. S. ——— Fleet.

Subject: Court of inquiry to inquire into the grounding (loss) of the U. S. S. ———.

1. A court of inquiry consisting of yourself as president, of Captain ———, U. S. Navy, and Commander ———, U. S. Navy, as additional members, and of Lieutenant Commander ———, as judge advocate, is hereby ordered to convene on board the U. S. S. ———, at 10 o'clock a. m. on September —, 19—, or as soon thereafter as practicable, for the purpose of inquiring into all the circumstances connected with the grounding (loss) of the U. S. S. ——— near ——— on September —, 19—.

2. The court will make a thorough investigation into all the circumstances connected with the aforesaid grounding (loss), the causes thereof, damages to property resulting therefrom, injuries to personnel incidental thereto, and the responsibility therefor. In connection with this inquiry the attention of the court is invited to sections 546 to 555, Naval Courts and Boards.

3. It is directed that the court notify Commander ———, U. S. Navy, and Lieutenant ———, U. S. Navy, of the time and place of the meeting of the court and that they will be parties to the inquiry in the status of interested parties at the outset, and will be afforded the rights of such parties in accordance with the provisions of Naval Courts and Boards.

4. The attention of the court is particularly invited to section 511, Naval Courts and Boards.

5. The court will include in its findings a full statement of the facts it may deem to be established, together with its opinion as to whether further proceedings should be had in the matter. If further proceedings are recommended the court will comply with the provisions of section 533, Naval Courts and Boards.

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6. The commander ——— Force, U. S. ——— Fleet, is hereby directed to furnish the necessary clerical assistance to aid the judge advocate in recording the proceedings of this court of inquiry.

7. In addition to the original record of proceedings there shall be forwarded a partial copy covering material in accordance with section 541, Naval Courts and Boards.

———— ————,
Secretary of the Navy.

503.

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V.

INVESTIGATIONS. BOARDS OF INVESTIGATION.

(Chapters XIV, XV, XVI—Part I.)

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RECORD OF PROCEEDINGS

OF AN

INVESTIGATION

CONDUCTED AT

THE NAVY YARD, NEW YORK,

BY ORDER OF

THE SECRETARY OF THE NAVY

568

TO INQUIRE INTO ——— ———.

569

AUGUST —, 19—.

82 to 92; 579

Precept: *See forms*, pp. 424–426.

579; 539

FIRST DAY

(*If case covers more than one day.*)

NAVY YARD, NEW YORK,
10 a. m., Thursday, August —, 19—.

The investigating officer, Mr. A——— B——— (Commander ———— B. W———, U. S. Navy), administered the prescribed oath o Mr. C——— D———, the stenographer, who then took his seat as uch.

572

The investigating officer called before him Foreman ——— ———, he complainant, and Quarterman ——— ———, the defendant, nd announced that the investigation would be conducted with open oors.

574

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The investigating officer then read the order directing him to make the investigation (and the other papers transmitted to him by the department), which is (are) hereto prefixed, marked "———" (and "———").

577; 521

Foreman ——— ——— and Quarterman ——— ——— were then informed of their rights to be present during the investigation and be represented by counsel.

575

Quarterman ——— desired to be represented by counsel and, with the permission of the investigating officer, Mr. O——— N. R——— entered as such.

W——— B. C——— was called as a witness and duly sworn.

573

(*Investigation conducted in the same manner as in a court of inquiry. See form*, pp. 412–415.)

577

* * *

The investigating officer and the parties to the investigation had no further witnesses to call and nothing further to offer, The investigating officer announced that the investigation was closed.

After full and mature deliberation, the investigating officer finds as follows. (*Insert finding.*)

578; 566 to 567

A——— B———,
Investigating Officer,
———, *Navy Department.*

Var.—G——— B. W———,
Commander, U. S. Navy.

LETTER TO INVESTIGATING OFFICER.

NAVY DEPARTMENT,
Washington, August —, 19—.

From: The Secretary of the Navy.
To: Mr. A——— B———, Navy Department, Washington.
Subject: Investigation of charges preferred against A——— W. L———, quarterman in charge of mechanics, navy yard, New York.
Reference: (*a*) Letter from W——— M———, foreman of construction and repair, navy yard, New York, of 7–12–15.

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Inclosures: 2.

1. Under the authority of section 183 of the Revised Statutes, as amended by the act of February 13, 1911, you are hereby detailed to investigate certain charges preferred against A——— W. L———, quarterman in charge of mechanics, department of construction and repair, navy yard, New York, which charges are contained in reference (*a*), and inclosures.

2. In accordance with the provisions of the statute above-mentioned, you are given authority to administer an oath to any witness attending to testify or depose during the course of the investigation.

3. You will notify Quarterman L——— of the nature of the charges against him, notify him that he may be present during the examination of witnesses, and give him an opportunity to introduce such witnesses and to make such statement as he may desire.

4. You will also notify Foreman ——— of these instructions and inform him that if he wishes to be present during the investigation or to suggest the calling of witnesses you will afford him an opportunity to do so.

5. You will make a careful and thorough examination into all the matters set forth in the papers above mentioned, and upon completion of the investigation you will report to the department the testimony taken and the facts established thereby.

6. The Commandant of the navy yard, New York, is hereby directed to afford you such facilities as may be necessary to the proper conduct of the investigation, and to furnish the necessary clerical assistance.

570

NAVY DEPARTMENT,
Washington, August —, 19—.

From: The Secretary of the Navy.
To: Commander G——— B. W———, U. S. Navy, navy yard, New York, via Commandant.
Subject: Investigation of alleged misconduct of Lieutenant X——— Y. Z———, U. S. Navy.
Inclosures: 2.

1. Under the authority of section 183 of the Revised Statutes, as amended by the act of February 13, 1911, you are hereby detailed to investigate the alleged misconduct of Lieutenant X——— Y. Z———, U. S. Navy, as set forth in the papers inclosed.

2. In accordance with the provisions of the statute above mentioned, you are given authority to administer an oath to any witness attending to testify or depose during the course of the investigation.

3. You will notify Lieutenant Z——— of the nature of the charges against him and of his right to be present during the investigation, and you will give him an opportunity to introduce such witnesses and to make such statement as he may desire.

4. You will make a thorough investigation of the matters set forth in the papers above mentioned, and upon the completion of the investigation you will make a complete report to the department of the facts which you deem to be established, together with specific data as to the times and places of the misconduct, if any.

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5. The commandant of the navy yard, New York, is hereby directed to afford you such facilities as may be necessary to the proper conduct of the investigation and to furnish the necessary clerical assistance.

570

(When circumstances require, an investigating officer may be authorized to employ outside stenographic assistance at the usual market rate, to be agreed upon in writing before any services are rendered. For form of agreement, see p. 370.)

RECORD OF PROCEEDINGS

OF A

BOARD OF INVESTIGATION

CONVENED AT

THE NAVY YARD, NEW YORK.

Var.—On board the U. S. S. ———,

BY ORDER OF

THE COMMANDANT, NAVY YARD AND STATION, NEW YORK.

Var. 1.—The commander in chief, U. S. Atlantic Fleet.

Var. 2.—The commanding officer, U. S. S. ———, senior officer present,

582

TO INQUIRE INTO ———.

583

AUGUST 12, 19—.

82 to 92; 593

Precept: *See form*, p. 428.

593; 539

FIRST DAY.

(If case covers more than one day.)

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NAVY YARD, NEW YORK,
Thursday, August 12, 19—.

The board met at 10 a. m.

Present:

Commander G——— H———, U. S. Navy, senior member;
Lieutenant I——— K———, U. S. Navy, member; and
Lieutenant L——— M———, U. S. Navy, member and recorder.

584

The convening order, hereto prefixed, marked "———," was read, and the board determined upon its procedure and decided to sit with open doors.

588; 574

Ensign P——— Q. R——— was called as a witness:

586; 587

(*Investigation conducted same as in court of inquiry. See forms*, pp. 412–415.)

591

* * *

There were no further declarations to be introduced nor anything further to be offered by the recorder or any of the parties to the investigation, and the senior member announced that the investigation was closed.

The board, after maturely deliberating upon the declarations recorded above, finds as follows: (*Insert finding and opinion, if required. See form*, p. 416.)

592; 566 to 567

G——— H———,
Commander, U. S. Navy, Senior Member.

I——— K———,
Lieutenant, U. S. Navy, Member.

L——— M———,
Lieutenant, U. S. Navy, Member and Recorder.

563 to 565

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ACTION OF CONVENING AUTHORITY.

U. S. S. WYOMING,
Navy Yard, New York, August —, 19—.

The proceedings and findings (the proceedings, findings, and opinion) of the board (investigation) in the foregoing case are approved and respectfully referred to the Secretary of the Navy.

———— ————,
Captain, U. S. Navy, Commanding, and
Senior Officer Present Afloat.

Var.—The proceedings and findings (the proceedings, findings, and opinion) of the board (investigation) in the foregoing case are disapproved for the following reasons (*give fully*), and the papers in the case are respectfully referred to the Secretary of the Navy.

581; 595; 544

ORDER CONVENING A BOARD OF INVESTIGATION.

U. S. S. WYOMING,
Navy Yard, New York, August —, 19—.

From: Commanding Officer, senior officer present afloat.
To: Commander G———— H————, U. S. Navy, U. S. S. *Texas*, via Commanding Officer.
Subject: Board of investigation in the case of the collision between the steamers of the U. S. S. ———— and the U. S. S. ———— that occurred in the North River July —, 19—.

1. A board of investigation, consisting of yourself as senior member and of Lieutenants I———— K. L———— and L———— M. W————, U. S. Navy, as additional members, will convene on board the *Texas* at 10 o'clock a. m., Thursday, August —, 19—, for the purpose of inquiring into and reporting upon the collision between the first steamer of the U. S. S. ———— and the second steamer of the U. S. S. ———— that occurred in the North River, New York, July —, 19—.

2. The board will make a thorough investigation of all the circumstances attendant to the above-mentioned collision and upon the conclusion of its investigation will report the facts established thereby, the amount of damage to each steamer, and the board's conclusion as to the responsibility for the collision, and will forward, in addition to the original record of proceedings, a partial copy covering material in accordance with section 593, Naval Courts and Boards.

3. The attention of the board is particularly invited to sections 589 and 511, Naval Courts and Boards.

585

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VI.

BOARDS OF INQUEST.

(Chapter XVII—Part I.)

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RECORD OF PROCEEDINGS

OF A

BOARD OF INQUEST

CONVENED AT

THE NAVY YARD, NEW YORK,

BY ORDER OF

THE COMMANDANT

IN THE CASE OF

A——— B———, LATE SEAMAN, U. S. NAVY.

AUGUST —, 19—.

82 to 92

Var.—Convened on board the U. S. S. ——— by order of Captain T——— R. S———, U. S. Navy, Senior Officer Present.

596

Precept: *See form*, p. 433.

606; 539

NAVY YARD, NEW YORK, *July* —, *19*—.

At a board of inquest assembled by the order hereto prefixed, marked "———," on the body of A——— B———, late seaman, U. S. Navy, found dead.

Present:

Lieutenant Commander E——— F———, U. S. Navy, president;
Surgeon G——— H———, U. S. Navy; and
Lieutenant I——— K———, U. S. Navy, members; and
Ensign L——— M———, U. S. Navy, recorder.

597

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The recorder read the order convening the board.

The board proceeded to the place where the body was found.

Var.—The board proceeded to ——— for the purpose of viewing the body.

600

Surgeon G——— H———, U. S. Navy, examined the body and reported to the board that the cause of the death was too apparent to necessitate the performance of an autopsy.

Var.— ——— reported to the board that the circumstances attending the death of A——— B——— were of such a nature as to require that an autopsy be performed, which was done.

600

The board then returned to the place where it had first convened and took the following evidence:

601

——— ——— was called as a witness.

602; 603

1. Q. State all you know about the death of A——— B———, seaman, U. S. Navy.

A. * * *

2. Q. * * *

A. * * *

604

The witness withdrew.

Var.—Passed Assistant Surgeon A——— H. K———, U. S. Navy, was called as a witness.

1. Q. State your opinion in regard to the cause of the death of the deceased.

A. * * *.

604

Surgeon G——— H———, U. S. Navy, (who had performed an autopsy on the body), stated that, in his opinion, the deceased met his death on (*date*), while on board the U. S. S. ———, then at ——— (*or*, at Brooklyn, New York), by reason of (*state cause*).

600

The inquest was finished.

The board, from a view of the body, and from the evidence before it, identified the body as that of A——— B———, late seaman, U. S. Navy, and is of the opinion that A——— B———, late seaman,

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U. S. Navy, died on (*date*) while on board the U. S. S. ———, then at ——— (while on authorized liberty at Brooklyn, New York) (while absent without authority at Brooklyn, New York), by reason of (*state cause*), and that his death was (not) occasioned by an act of duty in which he was engaged when it occurred (and was [not] the result of his own misconduct).

605; 566; 567

E——— F———,
Lieutenant Commander, U. S. Navy, President.
G——— H———,
Surgeon, U. S. Navy, Member.
I——— K———,
Lieutenant, U. S. Navy, Member.
L——— M———,
Ensign, U. S. Navy, Recorder.

563; 565

NAVY YARD, NEW YORK,
August —, 19—.

The proceedings of the board of inquest in the foregoing case are approved and forwarded.

——— ———,
Captain, U. S. Navy, Commandant.

608

From: Commandant.
To: Lieutenant Commander E——— F———, U. S. Navy.
Subject: Convening board of inquest.

1. A board, consisting of yourself as president, and of Surgeon G——— H——— and Lieutenant I——— K———, U. S. Navy, as additional members, and Ensign L——— M———, U. S. Navy, as recorder, will immediately assemble for the purpose of investigating and reporting upon the circumstances attending the death of A——— B———, late seaman, U. S. Navy, attached to the seamen's quarters, this navy yard, on (or about) ——— at (or near) ———.

2. The proceedings of the board will be conducted in accordance with the provisions of Naval Courts and Boards, sections 596 to 608.

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VII.

NAVAL EXAMINING BOARDS.

(Chapter XVIII—Part I.)

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NAVAL EXAMINING BOARDS.

RECORD OF PROCEEDINGS

OF A

NAVAL EXAMINING BOARD

CONVENED AT

THE NAVY YARD, MARE ISLAND, CAL.,

Var.—On board the U. S. S. *New York*,

IN THE CASE OF

LIEUTENANT H——— C. E———, U. S. NAVY,

APRIL 25, 19—.

82 to 92

Precept: *See form, p. 443.*

651

NAVAL EXAMINING BOARD,
Navy Yard, Mare Island, Cal., May 1, 19—.

646

The board met at 10 a. m., April 25, 19—, pursuant to an order, copy prefixed, marked "A."

Var.— ——— pursuant to orders, copies prefixed, marked "A(1)" to "A(3)." (*This variation is used when original members are detached; when the date or place of meeting is changed, etc.*)

651

Present:
Rear Admiral A——— B. C———, U. S. Navy;
Captain D——— E. F———, U. S. Navy, and
Captain G——— H. K———, U. S. Navy, members, and
Lieutenant L——— M. N———, U. S. Navy, recorder.

616 to 618

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Lieutenant H——— C. E———, U. S. Navy, reported for examination in obedience to an order, copy prefixed, marked "B."

Var.—Mr. L——— E. H——— appeared for examination under authority contained in a letter, copy prefixed, marked "B."

622

The precept (and orders altering the same) was (were) read by the recorder, and there was no objection to any member.

Var.—The candidate objected to Captain D——— E. F———, U. S. Navy, as a member, on account of ——— (*state reasons*) . Procedure the same as for challenge under general court-martial, p. 345.

631

The board and the recorder were duly sworn.

636 to 637

The candidate stated that he was ready for examination.

Var.— ——— that he was not ready for examination, and the facts of the case were reported to the Bureau of Navigation, copy of letter appended, marked "———."

The board then, at — a. m., adjourned until — a. m., to-morrow, Friday.

The board then conducted the examination of the candidate as follows:

		Began.	Ended.
April 25.	Subject: Steam engineering; electricity; ordnance and gunnery; seamanship; navigation and pilоting. (Oral)	10.00 a. m.	4.20 p. m.
April 26.	Subject: Practical navigation. (Written)	9.30 a. m.	4.30 p. m.
April 27.	Subject: Strategy and tactics. (Written)	9.40 a. m.	4.30 p. m.
April 28.	Subject: Law. (Written)	9.30 a. m.	12.30 p. m.
	Practical examination	1.30 p. m.	3.30 p. m.

or, as required by instructions accompanying the precept or otherwise issued for the purpose of governing the scope and character of examinations.

630

The written examination is appended, marked ———.

When applicable.—Owing to a lack of facilities for conducting a practical examination at ———, as shown by the correspondence, copy appended marked —, that part of the examination was not held.

A copy of the questions asked by the board, the mark for each question asked and the average mark for each subject, together with the board's individual opinion of the candidate's service record in grade, is appended, marked ——.

* * * * * * *

A communication, appended marked "——," was received from the Navy Department transmitting the papers named therein, which

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were duly considered by the board and which, with the exception of those intended for the Medical Board, are appended, marked "———" to "———."

632; 633

The candidate did not desire to call any witnesses or to take the stand as a witness in his own behalf (*or as the case may be*).

623; 638 to 642

(*If the candidate be a line officer above the grade of lieutenant:*) From the evidence before the board, it appears that the candidate has taken a course of instruction at the Naval War College; that the duration of the course was from April —, 19—, to August —, 19—. During his attendance at the War College it appears that the candidate took advantage of his opportunities to an excellent degree (*or as the case may be*).

Var.—It does not appear from the evidence before the board that the candidate has taken any course of instruction at the Naval War College.

648

The examination of the candidate having been concluded, he was discharged from further attendance.

624

The board, having deliberated on the evidence before it, decided that the mental, moral, and professional fitness of the candidate to perform all his duties at sea has been established to its satisfaction.

We hereby certify that Lieutenant H——— C. E———, U. S. Navy, has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade (grades) to which he is to be promoted, to wit: ——— (and ———), and recommend him for promotion.

643 to 644

A——— B. C———,
Rear Admiral, U. S. Navy, President.
D——— E. F———,
Captain, U. S. Navy, Member.
G——— H. K———,
Captain, U. S. Navy, Member.
L——— M. N———,
Lieutenant, U. S. Navy, Recorder.

650

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Var. 1.— ——— has been established to its satisfaction. In arriving at its conclusion as to the professional (moral) fitness of the candidate, the board fully considered the record of proceedings of the general court-martial before which the candidate was tried October 19, 19— (the unfavorable reports on fitness from October 1, 19—, to March 31, 19—, and from April 1, 19—, to September 30, 19—, as follows:) (the letter of reprimand addressed to the candidate by the department under date of March 4, 19—, as follows:), but in view of the candidate's otherwise excellent record as indicated by his reports on fitness (*or state other reasons*), the board came to a favorable conclusion as to his professional (moral) fitness notwithstanding such evidence.

We hereby certify, *etc.*

649

Var. 2.—The board, having deliberated on the evidence before it, decided that the mental and the moral fitness of the candidate to perform all his duties at sea has been established to its satisfaction; but that owing to deficiency in the subject of ———, as shown by his written examination papers hereto appended (*or as the case may be*), his professional fitness has not been so established.

We hereby certify that Lieutenant H——— C. E———, U. S. Navy, has the mental and the moral, but not the professional, qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, to wit ———, and do not recommend him for promotion.

645

Var. 3.—(*Majority and minority opinion*). We hereby certify that Lieutenant H——— C. E———, U. S. Navy, has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, to wit ———, and recommend him for promotion.

A——— B. C———,
Read Admiral, U. S. Navy, President.
G——— H. K———,
Captain, U. S. Navy, Member.

From an inspection of the written examination of the candidate, and from the answers to interrogatories sent to officers under whom the candidate has served, I am constrained to differ with the majority of the board as to the professional fitness of the candidate to perform all his duties at sea.

I hereby certify that Lieutenant H——— C. E———, U. S. Navy, has the mental and moral, but not the professional qualifications to perform efficiently all the duties both at sea and on shore, of the grade to which he is to be promoted, to wit ———, and do not recommend him for promotion.

D——— E. F———,
Captain, U. S. Navy, Member.

L——— M. N———,
Lieutenant, U. S. Navy Recorder.

650

Var. 4.—The board having deliberated on the evidence before it, and having determined that from such evidence it appears *prima facie* that Lieutenant H——— C. E———, U. S. Navy, is not morally qualified for promotion by reason of his own misconduct (drunkenness) (overindulgence in intoxicants)

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(*or, as the case may be*), he was called before the board and informed of and given an opportunity to be heard upon the charges against him, as follows:

On October 19, 19—, he was under the influence of intoxicating liquor on board of the U. S. S. ——— while executive officer of that vessel.

That in the report of fitness from April —, 19—, to September —, 19—, his commanding officer reported that he would object to having him under his immediate command unless he received satisfactory assurance that this officer would entirely abstain from the use of intoxicating liquor.

The claim of ——— & Co., New York, dated September —, 19—, as follows:—

The claim of H——— & B———, Brooklyn, N. Y., dated November —, 19—, as follows:—

An extract from the medical record of the candidate, dated July —, 19—, and reading as follows:

Lieutenant E——— asked permission to introduce A——— R——— as a witness. The request was granted, and the witness entered and was duly sworn.

(*Testimony recorded as for defense in general court martial.*)

Lieutenant E———, the candidate, was, at his own request, called as a witness and duly sworn, *etc.*

After the consideration of his case, during which the board was cleared, the board was opened, and the candidate was discharged from further attendance.

The board was then cleared for deliberation and decided that the mental and professional fitness of the candidate to perform all his duties at sea has been established to its satisfaction; but that, by reason of drunkenness (*or*, by reason of ———) which is the result of his own misconduct, his moral fitness has not been so established.

We hereby certify that Lieutenant H——— C. E———, U. S. Navy, has the mental and professional, but not the moral, qualifications to perform all the duties, both at sea and on shore, of the grade to which he is to be promoted, to wit ———, and do not recommend him for promotion.

645; 656

Var. 5.—(In case of a candidate for admission to any staff corps of the Navy, except the pay corps).

The board, having deliberated on the evidence before it, found that the candidate has obtained a general average of — per cent and decided that his mental, moral, and professional qualifications have been established to its satisfaction.

We hereby certify that ——— ——— is mentally, morally, and professionally qualified for admission to the United States Navy as an assistant surgeon (assistant civil engineer, *or, as the case may be*), and recommend him for appointment.

644 to 645

Var. 6.—(In case of a candidate for admission to the Pay Corps:)

The board, having deliberated on the evidence before it, found that the candidate has obtained a general average of — per cent, and decided that his physical, mental, and moral qualifications have been established to its satisfaction.

We hereby certify that ——— ——— ——— is physically, mentally, and morally qualified for admission to the U. S. Navy as an assistant paymaster, and recommend him for appointment.

644; 645; 617

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PROCEDURE IN CASE AN OFFICER IS TO BE EXAMINED ON HIS RECORD ONLY.

625

NAVAL EXAMINING BOARD,
Navy Yard, Washington, D. C., August 1, 19—.

The board met at 10 a. m., July 31, 19— (*or*, this date), pursuant to an order, copy prefixed marked "A."

Present:

Rear Admiral A——— B. C———, U. S. Navy;
Rear Admiral D——— E. F———, U. S. Navy; and
Captain G——— H. K———, U. S. Navy, members; and
Lieutenant L——— M. N———, U. S. Navy, recorder.

The board convened for consideration of the case of Commander O——— P. Q———, U. S. Navy, preliminary to his promotion.

The precept was read by the recorder. The recorder and the board were duly sworn.

A letter from the Navy Department, directing the examination of Commander Q——— on his record only, is appended marked "B."

A communication, appended, marked "C," was received from the Navy Department, transmitting the papers named therein, which are appended, marked "———" to "———."

The board, having deliberated on the evidence before it, and having taken into consideration their association with the candidate in the Navy and his reputation as an officer, decided that his mental, moral, and professional fitness to perform all his duties at sea has been established to its satisfaction.

We hereby certify that Commander O——— P. Q———, U. S. Navy, has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, to wit ———, and recommend him for promotion.

A——— B. C———,
Rear Admiral, U. S. Navy, President.
D——— E. F———,
Rear Admiral, U. S. Navy, Member.
G——— H. K———,
Captain, U. S. Navy, Member.
L——— M. N———,
Lieutenant, U. S. Navy, Recorder.

Var.—The board, having deliberated on the evidence before it, deems it necessary that the candidate appear personally before it in order to establish his fitness for promotion for the reason that the board desires to inquire further into the matter of the entry in his report of fitness, dated ———, to the effect that ——— ———.

625; 621

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PRECEPT.

NAVY DEPARTMENT.
Washington, April —, 19—.

To: Rear Admiral A——— B. C———, U. S. Navy, navy yard, Mare Island, California, via Commandant.

Subject: Precept for a Naval Examining Board.

1. A naval examining board for the examination of such candidates for admission or promotion as may be directed to appear before it is hereby ordered to convene at the navy yard, Mare Island, California, as soon as may be practicable.

2. The board will consist of yourself as president, and of Captains D——— E. F——— and G——— H. K———, U. S. Navy, as members.

3. Lieutenant L——— M. N———, U. S. Navy, will act as recorder.

4. The proceedings of the board will be conducted and the record forwarded in accordance with the instructions contained in "Naval Courts and Boards." (*Add or refer to such instructions as may apply relative to the conduct of the examination.*)

———,
Secretary of the Navy.

619

PRECEPT IN BLANK.

In cases where desirable a precept may be signed in blank by a duly authorized convening authority. In such cases the form given above is to be followed except that the time and place of meeting and the composition of the board is left blank. Such precept in blank will be forwarded to a designated officer together with instructions requiring him to insert the time and place of meeting and name the composition of the board from such eligible officers as he may deem proper. The designated officer, having complied with the above, countersigns the precept and forwards same to the officer named by him as president.

PRECEPT ISSUED BY OFFICER AUTHORIZED TO CONVENE EXAMINING BOARDS BY THE SECRETARY OF THE NAVY.

In cases where the Secretary of the Navy has authorized "the senior officer present, or other commanding officer, on a foreign station" to order boards in accordance with the act quoted in section 615, the precept issued by an officer so authorized shall refer to his authorization.

LETTER TO CANDIDATE FOR PROMOTION.

NAVY DEPARTMENT, BUREAU OF NAVIGATION,
Washington, April —, 19—.

To: Lieutenant (junior grade) F——— A. R———, U. S. Navy, navy yard, Washington, D. C., via Commandant.

Subject: Examination for promotion.

1. Report to the president of the board of medical examiners, navy yard, Washington, D. C., at 10 a. m., April —, 19—, for examination, preliminary to promotion to the grade (grades) of ——— (and ———), in accordance with section 1493 of the Revised Statues.

2. Upon the completion of this examination, or when otherwise directed by proper authority, you will report to the president of the naval examining board for the examination required by section 1496 of the Revised Statutes.

3. This is in addition to your present duties.

622

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LETTER TRANSMITTING MATTER ON FILES RELATIVE TO CANDIDATE.

NAVY DEPARTMENT, BUREAU OF NAVIGATION,
Washington, D. C., July —, 19—.

To: President, Naval Examining Board, navy yard, Washington, D. C.
Subject: Transmitting papers for consideration in connection with examination for promotion.
Inclosures: 23.

Lieutenant S——— P. L———, U. S. Navy, having been ordered to report to you on July —, 19—, for examination preliminary to promotion, the bureau, in accordance with the requirements of section 632, Naval Courts and Boards, transmits herewith all matter on the files and records of the Navy Department which relate in any way to his fitness for promotion, viz:

One record of service.
Twenty-two reports on fitness of officers.

RECORD OF SERVICE OF LIEUTENANT S——— P. L———, U. S. NAVY.

(*Since last examination.*)

19—. To examination for promotion, Washington, May —, and return. (On the *Tennessee.*)
19—, May —. Promoted to lieutenant.
19—, January —. Detached and to the *Washington. Etc.*

SUPERVISORY BOARD.

657 to 662

Procedure: No record need be kept of proceedings. See p. 447 for form of candidate's waiver and board's certificate to be forwarded with examination papers.

660 to 662

FORM TO BE USED BY THE STATUTORY BOARD THAT DETERMINES WHETHER OR NOT AN OFFICER EXAMINED BEFORE A SUPERVISORY BOARD IS QUALIFIED FOR PROMOTION.

NAVAL EXAMINING BOARD,
Navy Yard, Washington, D. C., July 21, 19—.

The board met at 10 a. m., July 12, 19—, pursuant to an order, copy prefixed marked "A."

Present:
Rear Admiral A——— B. C———, U. S. Navy;
Captain D——— E. F———, U. S. Navy; and
Captain G——— H. K———, U. S. Navy, members; and
Lieutenant L——— M. N———, U. S. Navy, recorder.

The board convened for consideration of the case of Ensign P——— Q. R———, whose written professional examination preliminary to his promotion had been conducted by a supervisory board on the U. S. S. *Texas*, at ———.

The recorder read the precept.

The board and the recorder were duly sworn.

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Certain papers received from the supervisory board, which show that the candidate had no objection to having his examination conducted by the Naval Examining Board at Washington, D. C., and that he waived his right to appear in person before said board, are appended, marked "———" to "———."

The written examination of the candidate is appended, pages "———" to "———."

A communication, appended, marked "———," was received from the Navy Department transmitting the papers named therein, which were duly considered by the board and which, with the exception of those intended for the Medical Board, are appended, marked "———" to "———."

The board, having deliberated on the evidence before it, decided that the mental, moral, and professional fitness of the candidate to perform all his duties at sea has been established to its satisfaction.

We hereby certify that Ensign P——— Q. R———, U. S. Navy, has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, to wit ———, and recommend him for promotion.

A——— B. C———,
Rear Admiral, U. S. Navy, President.
D——— E. F———,
Captain, U. S. Navy, Member.
G——— H. K———,
Captain, U. S. Navy, Member.

L——— M. N———,
Lieutenant, U. S. Navy, Recorder.

LETTER DIRECTING AN OFFICER TO APPOINT A SUPERVISORY BOARD.

From: Secretary of the Navy.
To: Commander in Chief, United States Asiatic Fleet.
Subject: Supervisory board for the examination, preliminary to promotion, of such officers as may be ordered to report for such examination.

1. You are directed to appoint a board, consisting of three officers, to supervise the written professional examination, preliminary to promotion, of such officers as may be ordered to report for such examination. The board will ask the candidates if they have any objection to the Naval Examining Board at the navy yard, Washington, D. C., which will be ordered to conduct their professional examination and to make a final recommendation in their cases to the department; and if they have no objection, they will be permitted to waive their right to appear in person before said board, as conferred by section 1500 of the Revised Statutes, said waivers to be sworn to and to be attached to the examination papers of the candidate, and to be in accordance with the form prescribed by Naval Courts and Boards, p. 447.

2. Upon the completion of the examination, a certificate signed by each member of the board will be attached to the papers in each case, stating whether

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or not the candidate has any objection to his examination for promotion being conducted by the Naval Examining Board, navy yard, Washington, D. C., and that he received no outside assistance during its progress. The board will forward the papers by registered mail in a sealed envelope, marked "Confidential," to the "President Naval Examining Board, navy yard, Washington, D. C."

3. You will direct these officers, if they waive their right to appear in person before the Naval Examining Board as outlined above, to report to the supervisory board for professional examination, preliminary to promotion, and in any event you will direct them to report to the Board of Medical Examiners for physical examination, preliminary to promotion.

4. The supervisory board will remain in force until further orders, and if any member of that board is relieved or detached, you are hereby authorized to appoint new members to take the places left vacant.

PRECEPT CONVENING SUPERVISORY EXAMINING BOARD.

UNITED STATES ASIATIC FLEET,
U. S. S. ———, FLAGSHIP,
———— ————, *July 2, 19—.*

From: Commander in Chief.
To: Lieutenant Commander E——— C. K———, U. S. Navy, U. S. S. *Texas*, via commanding officer.
Subject: Convening supervisory examining board.

1. A supervisory board for the examination, preliminary to promotion, of such officers as may be ordered before it is hereby ordered to convene on board the U. S. S. ——— at ——— ———, at 10.00 o'clock a. m., Tuesday, July —, 19—, or as soon thereafter as may be practicable.

2. The board will consist of yourself as president and of Lieutenant (junior grade) F——— R. K———, U. S. Navy, and Lieutenant (junior grade) H——— P. L——— as members. Lieutenant (junior grade) H——— P. L———, U. S. Navy, will act as recorder.

3. The board will ask the candidates if they have any objection to the naval examining board at the navy yard, Washington, D. C., which will be ordered to conduct their professional examination and to make a final recommendation in their cases to the department; and if they have no objection they will be permitted to waive their right to appear in person before the board, as conferred by section 1500 of the Revised Statutes, said waiver to be sworn to, to be attached to the examination papers, and to be in accordance with the form prescribed in Naval Courts and Boards, p. 447.

4. Upon the completion of the examination a certificate signed by each member of the board will be attached to the papers stating whether or not each candidate has any objection to his examination being conducted by the naval examining board, navy yard, Washington, D. C., and that he has received no unauthorized assistance during its progress. The board will forward the papers by registered mail in a sealed envelope marked "Confidential" to "President naval examining board, navy yard, Washington, D. C."

5. The procedure of the board shall be in accordance with section 661, Naval Courts and Boards.

657 to 659

LETTER TO CANDIDATE FOR PROMOTION ORDERED BEFORE A SUPERVISORY BOARD.

From: Bureau of Navigation.
To: Ensign P——— Q. R———, U. S. Navy, U. S. S. ———, via Commanding Officer.

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Subject: Examination for promotion.

1. As soon as practicable after the receipt of the necessary questions and papers, and when directed by your commanding officer, you will report to the president of a board of medical examiners for examination, preliminary to promotion to the grade of ———, in accordance with section 1493 of the Revised Statutes.

2. Upon the completion of this examination, or when otherwise directed by proper authority, you will report to your commanding officer for a supervisory examination in accordance with section 1496 of the Revised Statutes.

3. The statutory board which will finally determine your fitness for promotion will meet upon your case at ———, ———, on ———, or as soon thereafter as may be practicable.

4. This is in addition to your present duties.

657

FORM FOR WAIVER TO BE EXECUTED BY CANDIDATE BEFORE SUPERVISORY BOARD.

U. S. S. TEXAS,
Navy Yard, New York, July —, 19—.

Having been notified of the time and place of meeting of the examining boards which are to conduct my examination for promotion, I hereby waive all right to be present in person before, or to be heard by, the Naval Examining Board which is finally to pass on my case, and I further hereby waive all right to be given opportunity, in any manner whatsoever, to personally appear before that board. In taking this action I am fully cognizant of my rights in the premises, under section 1500 of the Revised Statutes, including the right to appear in person before that board, and the penalties to be suffered by me in case the said Naval Examining Board finds me not qualified for promotion.

P——— Q. R———,
Ensign, U. S. Navy.

Subscribed and sworn to before me this —— day of July, 19—.

E——— C. K———,
Lieutenant Commander, U. S. Navy,
President, Supervisory Examining Board.

661

CERTIFICATE OF SUPERVISORY BOARD TO THE EFFECT THAT THE CANDIDATE RECEIVED NO UNAUTHORIZED ASSISTANCE DURING THE EXAMINATION.

U. S. S. TEXAS,
Navy Yard, New York, July —, 19—.

The candidate stated that he had no objection to his examination being conducted by the Naval Examining Board, navy yard, Washington, D. C., and it is hereby certified that he received no unauthorized assistance during the progress of the examination.

E——— C. K———,
Lieutenant Commander, U. S. Navy, President.
F——— R. K———,
Lieutenant (j. g.) U. S. Navy, Member.
H——— P. L———,
Lieutenant (j. g.) U. S. Navy, Member and Recorder.

662

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VIII.

BOARDS OF MEDICAL EXAMINERS.

(Chapter XIX—Part I.)

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RECORD OF PROCEEDINGS

OF A

BOARD OF MEDICAL EXAMINERS

CONVENED AT

THE NAVY YARD, MARE ISLAND, CAL.,

Var.—On board the U. S. S. *New York*,

IN THE CASE OF

LIEUTENANT H——C. E——, U. S. NAVY.

JULY 31, 19—.

82 to 92

Precept: *See form, p. 458.*

676; 651

BOARD OF MEDICAL EXAMINERS,
Navy Yard, Mare Island, Cal., August 1, 19—.

676; 646

The board met at 10 a. m., July 31, 19— (this day), pursuant to an order, copy prefixed, marked "A."

(*See Variation, page 437.*)

Present:

Medical Inspector C—— B. A——, U. S. Navy;

Surgeon F—— E. D——, U. S. Navy; and

Passed Assistant Surgeon K—— H. G——, U. S. Navy, members; and

Assistant Surgeon N—— M. L——, U. S. Navy, recorder.

665

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Lieut. H——C. E——, U. S. Navy, reported for examination in obedience to an order, copy prefixed, marked "B."

The precept was read by the recorder and there was no objection to any member.

(*See Variation, page 438.*)

The board and the recorder were duly sworn.

669; 636 to 637

The candidate's statement as to his physical qualifications is appended, marked "C."

672

The medical history of the candidate is appended, marked "D."

671

Each member of the board then made a careful physical examination of the candidate and found no trace of any ailment or disability now existing.

670

Var. 1.— —— examination of the candidate, giving special attention to the following entries contained in his medical history, *viz, febris continua simplex, vulnus punctum, etc.*, and found no trace of any ailment or disability now existing.

Var. 2.— —— and found that he is suffering from —— contracted (not) in line of duty.

Var. 3.—Each member of the board then made a careful physical examination of the candidate and found that he has recovered from the ailment noted in his medical record for the period since January —, 19—; that he has lost his left leg at the knee; that such disability was occasioned by a wound received in the line of his duty; and that it does not incapacitate him for other than sea duties in the grade to which he is to be promoted; that there is no other disability now existing.

Var. 4.—Each member of the board then made a careful physical examination of the candidate and found that he is deficient in weight and mean chest measurement, according to the prescribed naval standard—height 67 inches, weight 130 pounds (2 pounds underweight), mean chest circumference 33 inches (1 inch under standard).

We hereby certify that Lieutenant H—— C. E——, U. S. Navy, is physically qualified to perform all his duties at sea, and recommend him for promotion.

673

Var. 1.—We hereby certify that Lieutenant H—— C. E——, U. S. Navy, is incapacitated for service by reason of (*state the physical disability*) contracted (not) in the line of duty, and he is therefore not qualified to perform all his duties at sea, and we do not recommend him for promotion.

674; 675

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Var. 2.—We hereby certify that Lieutenant H——— C. E———, U. S. Navy, is not physically qualified to perform all his duties at sea owing to ———, and we recommend that he be further examined physically in ——— months in order to ascertain the extent of his incapacity.

673

Var. 3.—We hereby certify that ——— is physically qualified to perform all his duties except those at sea, and recommend him for promotion in accordance with the provisions of section 1494 of the Revised Statutes.

664

In the case of a candidate for appointment:

Var. 4.—We hereby certify that Mr. ——— ——— is (not) physically qualified for admission to the United States Navy as an assistant paymaster (assistant surgeon), (*or, as the case may be*) and do (not) recommend him for appointment.

673

Var. 5.—We hereby certify that should the Secretary of the Navy waive the above 2 pounds under standard weight and 1 inch under standard chest circumference, ——— ———, M. D., is physically qualified for admission to the United States Navy as an assistant surgeon in the Medical Reserve Corps, and recommend him for appointment.

667

C——— B. A———,
Medical Inspector, U. S. Navy, President.
F——— E. D———,
Surgeon, U. S. Navy, Member.
K——— H. G———,
Passed Assistant Surgeon, U. S. Navy, Member.
N——— M. L———,
Assistant Surgeon, U. S. Navy, Recorder.

676; 650

PRECEPT FOR BOARD OF MEDICAL EXAMINERS.

NAVY DEPARTMENT,
Washington, July —, 19—.

To: Medical Inspector C——— B. A———, U. S. Navy, Navy Yard, Mare Island, California, via commandant.

Subject: Precept for a Board of Medical Examiners.

1. A board of medical examiners, to examine and report upon the physical qualifications of such candidates for admission or promotion as may be ordered to appear before it, is hereby ordered to convene at the navy yard, Mare Island, California, on Monday, August 1, 19—, at 10 o'clock a. m., or as soon thereafter as practicable.

2. The board will consist of yourself, as president, and of Surgeon F——— E. D———, and Passed Assistant Surgeon K——— H. G———, U. S. Navy, as members. Assistant Surgeon N——— M. L———, U. S. Navy, will act as recorder.

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3. The proceedings of the board will be conducted and the record forwarded in accordance with the provisions of Naval Courts and Boards.

——— ———,
Secretary of the Navy.

PRECEPT IN BLANK.

See note under this heading on page 443.

PRECEPT FOR MEDICAL EXAMINER.

NAVY DEPARTMENT,
Washington, July —, 19—.

To: Passed Assistant Surgeon C——— B. A———, U. S. Navy, Medical Examiner, Navy Recruiting Station, Cleveland, Ohio.

Subject: Medical Examiner.

1. You are hereby appointed a medical examiner to examine and report upon the physical qualifications of such candidates for admission to the ——— Reserve Corps (such candidates for admission to the Navy as acting assistant surgeons) as assistant (dental) surgeons as may be authorized to appear before you. You will hold the examinations at the Recruiting Station, Cleveland, Ohio, on Monday, August 1, 19—, at 10 o'clock a. m., or as soon thereafter as practicable.

2. The proceedings will be conducted and the record forwarded in accordance with the provisions of Naval Courts and Boards.

3. Should it be impracticable for the medical examiner to be sworn by an officer of the Navy or Marine Corps authorized to administer oaths, the medical examiner will insert the following certificate in the record of the proceedings in each case:

"I hereby certify that I have honestly and impartially examined and reported upon the case of ——— ———."

——— ———,
Secretary of the Navy.

668

CERTIFICATE OF CANDIDATE.

BOARD OF MEDICAL EXAMINERS,
Navy Yard, Mare Island, California, August —, 19—.

I hereby certify that I am, to the best of my knowledge and belief, physically qualified to perform all the duties at sea in the grade for which I am a candidate for promotion (appointment), and that I am at present free from all bodily ailments (except ———).

In the case of a candidate for admission, add the following:

I am a native-born (naturalized) citizen of the United States. (*If naturalized, state when and where.*)

I was born at ———, ——— County, in the State of ———, on the — day of ———, in the year ———, and am at this time a legal resident of the State of ———.

My home address is ———, ———, ———.

My local address is ———, ———, ———.

——— ——— ———.

Subscribed and sworn to before me this — day of ———, A. D. 19—.

C——— B. A———,
Medical Inspector, U. S. Navy,
President Board of Medical Examiners.

672

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MEDICAL HISTORY OF CANDIDATE.

NAVY DEPARTMENT,
BUREAU OF MEDICINE AND SURGERY,
Washington, July —, 19—.

Medical record of Lieutenant H——— C. E———, U. S. Navy, since September 8, 19—.

——— ———
——— ———

T——— L. R———,
Surgeon General, U. S. Navy.

671

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IX.

NAVAL RETIRING BOARDS.

(Chapter XX—Part I.)

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RECORD OF PROCEEDINGS

OF A

NAVAL RETIRING BOARD

CONVENED AT

THE NAVY YARD, WASHINGTON, D. C.,

IN THE CASE OF

CAPTAIN Q——— R. S———, U. S. NAVY.

MARCH 9, 19—.

82 to 92

Precept: *See form, p. 462.*

698; 651

NAVAL RETIRING BOARD,
Navy Yard, Washington, D. C., March 10, 19—.

698; 646

The board met at 10 a. m. March 9, 19— (this day), pursuant to an order, copy prefixed, marked "A."

(*See variations, page 437.*)

Present:
Rear Admiral A——— B. B———, U. S. Navy;
Captain D——— E. F———, U. S. Navy;
Medical Director R——— T. S———, U. S. Navy;
Captain G——— H. K———, U. S. Navy; and
Surgeon U——— V. W———, U. S. Navy, members; and
Lieutenant L——— M. N———, U. S. Navy, recorder.

679; 681 to 682

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Captain Q——— R. S———, U. S. Navy, reported in obedience to an order, copy prefixed, marked "B."

679; 683

The precept was read by the recorder, and there was no objection to any member.

(*See variation, page 438.*)

685

The board and the recorder were duly sworn.

686 to 688

A communication, appended, marked "C," was received from the Navy Department, transmitting the papers named therein, which are appended, marked "———" to "———"; those marked "———" to "———," inclusive, were read.

The medical members were directed to examine into the past and present physical and mental condition of Captain S———; letter of instructions appended, marked "———."

692

Pending the physical examination, the board took a recess (adjourned) in this case until 2 p. m. March 9, 19— (until 11.30 a. m. this day), when it reconvened; present, the entire board and the officer under examination.

Medical Director R——— T. S———, the senior medical member of the board, stated to the board that, in his opinion, Captain S——— is suffering from a chronic inflammation of the heart; that his condition is permanent, by reason of which he is incapacitated for active service in the Navy, and that his incapacity is (not) the result of an incident of the service. (*Or as the case may be.*)

Surgeon U——— V. W———, a member, stated to the board that he concurred in the opinion expressed by Medical Director R——— T. S———. (*Or as the case may be.*)

692

Captain S——— stated that he did not desire to question the medical members, to introduce evidence, or to make a statement. He was then discharged from further attendance.

684; 692

Var. —. ——— requested the board to summon as witnesses the following persons. (*Insert names.*)

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The request of Captain S——— was granted, and the necessary summons were issued. Pending the arrival of the witnesses, the board adjourned until ———.

691

The board met March —, 19—, pursuant to adjournment of the —— instant.
Present: The entire board and the officer under examination.
Medical Director C——— R———, U. S. Navy, a witness in behalf of Captain S——— entered and was duly sworn.

689

(*Testimony recorded as for defense in general court-martial.*)
The witness verified his testimony and withdrew.
(*The same procedure is followed with regard to all witnesses.*)
Captain S——— then submitted in evidence certain papers, appended, marked "———" to "———."
Or, Captain S——— desired to take the stand as a witness and duly sworn.

684

Captain S——— had no further evidence to introduce. He withdrew, after having been informed that he would receive due notification when he might regard himself as discharged from further attendance before the board.

692

The medical members submitted a report, which was sworn to, read, and appended, marked "———."

692

The board, having deliberated on the evidence before it, decided that Captain Q——— R. S———, U. S. Navy, is incapacitated for active service by reason of apoplexy (*or, as the case may be*) and that his incapacity is (not) the result of an incident of the service.

693; 696

A——— B. C———,
Rear Admiral, U. S. Navy, President.
D——— E. F———,
Captain, U. S. Navy, Member.
R——— S. T———,
Medical Director, U. S. Navy, Member.
G——— H. K———,
Captain, U. S. Navy, Member.
U——— V. W———,
Surgeon, U. S. Navy, Member.
L——— M. N———,
Lieutenant, U. S. Navy, Member.

698; 650

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Var. 1.—The board, having deliberated on the evidence before it, decided that Captain Q——— R. S———, U. S. Navy, is temporarily incapacitated for active service by reason of malarial poisoning, and recommends that he be granted sick leave for three months.

Var. 2.—The board, having deliberated on the evidence before it, and having decided thereupon that *prima facie* it appears that the incapacity of Captain Q——— R. S———, U. S. Navy, is the result of his own misconduct, he was called before the board and given an opportunity to be heard upon the charges against him, as follows: (*Insert charges.*)

Captain S——— had nothing to offer in relation to the charges. (Captain S——— was, at his own request, called before the board and duly sworn as a witness. *Testimony recorded as for defense in a general court-martial.*) (Captain S——— asked permission to introduce Mr. J——— R——— as his counsel. The request was granted, and Mr. R——— entered.)

Or, Captain S——— requested the board to summon the following persons as witnesses. (*Insert names.*) The request of Captain S——— was granted and the necessary summons issued. Pending the arrival of the witnesses the board adjourned until ———.

The board met March —, 19—, pursuant to adjournment of the — instant.

Present: The entire board and the officer under examination (and counsel).

Medical Inspector C——— N———, U. S. Navy, a witness called by Captain S———, was duly sworn.

(*Testimony recorded as for defense in a general court-martial.*)

The witness verified his testimony and withdrew.

Captain S——— had no further witnesses to call and had nothing further to offer.

The board was then cleared, and, having deliberated on the evidence before it, decided that Captain Q——— R. S———, U. S. Navy, is incapacitated for active service by reason of ———, and that his incapacity is not the result of an incident of the service, but is the result of his own misconduct.

697

Var. 3.—The board, having deliberated on the evidence before it, decided that Captain Q——— R. S———, U. S. Navy, is incapacitated for service by reason of (*state the physical disability*), contracted in the line of duty.

694 to 696

PRECEPT.

NAVY DEPARTMENT,
Washington, March —, 19—.

To: Rear Admiral A——— B. C———, U. S. Navy, navy yard, Washington, D. C.

Subject: Precept for a Naval Retiring Board.

1. A naval retiring board, consisting of yourself, as president, and of Captain D——— E. F———, U. S. Navy; Medical Director R——— S. T———, U. S. Navy; Captain G——— H. K———, U. S. Navy; and Surgeon U——— V. W———, U. S. Navy, as members, is hereby ordered to convene at the navy yard, Washington, D. C., at 10 a. m., March 9, 19—, or as soon thereafter as practicable.

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2. Lieutenant L——— M. N———, U. S. Navy, will act as recorder.

3. The board will examine and report upon such officers as may be ordered by the Secretary of the Navy to appear before it, in conformity with the provisions of Title XV, chapter 3, of the Revised Statutes and of the act of March 4, 1911.

4. The board will not examine officers who are senior to any non-medical member of the board without specific instructions from the Secretary of the Navy in each case.

5. The proceedings of the board will be conducted and the record forwarded in accordance with the provisions of Naval Courts and Boards.

———— ————,
Secretary of the Navy.

LETTER TO OFFICER.

NAVY DEPARTMENT,
Washington, D. C., March —, 19—.

To: Captain Q——— R. S———, U. S. Navy.
Subject: Examination for retirement.

1. The board of medical examiners before which you appeared on February —, 19—, reported as follows:

———— ————.
———— ————.
———— ————.

2. The findings and recommendation of the board were approved by the President on February —, 19—, and you will therefore proceed to Washington, D. C., and report to the president of the Naval Retiring Board at the navy yard, at 10 a. m., March —, 19—, for examination in conformity with Title XV, chapter 3 of the Revised Statutes and the act of March 4, 1911.

3. Upon the completion of this duty, await orders at Washington, D. C.

———— ————.

Var. —. When incapacity has developed before officer became due for promotion.—You will proceed to Washington, D. C., and report to the president of the Naval Retiring Board at the navy yard, at 10 a. m., March —, 19—, for examination in conformity with Title XV, chapter 3 of the Revised Statutes, *etc.*

LETTER TRANSMITTING PAPERS TO BOARD.

NAVY DEPARTMENT,
BUREAU OF NAVGATION,
Washington, D. C., March —, 19—.

To: President Naval Retiring Board, navy yard, Washington, D. C.
Subject: Transmitting papers in the case of Captain Q——— R. S———, U. S. Navy.
Inclosures: 3.

1. Captain Q——— R. S———, U. S. Navy, having been ordered to report to you for examination in conformity with Title XV, chapter 3 of the Revised Statutes and the act of March 4, 1911, the bureau transmits herewith all matter found on the files and records of the department which relates in any way to his physical or mental condition, viz:

One memorandum from the Judge Advocate General of the Navy, dated February —, 19—, and papers mentioned therein.

One record of service and one medical record.

———— ————.

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NAVY DEPARTMENT,
BUREAU OF NAVIGATION,
Washington, D. C., February —, 19—.

Record of service of Captain Q——— R. S———, U. S. Navy:

19—, May 22: Appointed midshipman from North Dakota.

——— ———.

——— ———.

——— ———.

19—, June 1: Detached June 6, and to the *Texas*.

NAVY DEPARTMENT,
BUREAU OF MEDICINE AND SURGERY,
Washington, D. C., February —, 19—.

Medical record of Captain Q——— R. S———, U. S. Navy, since August —, 19—.

——— ———.

——— ———.

——— ———.

——— ———,
Surgeon General, U. S. Navy.

NAVY DEPARTMENT,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, February —, 19—.

Memorandum to the Bureau of Navigation.

Referring to the bureau's memorandum No. —, of February —, 19—, informing this office that Captain Q——— R. S———, U. S. Navy, has been ordered to appear before a naval retiring board, the bureau is informed that nothing is found of record in this office relating in any way to the physical or mental condition of said officer except the record of proceedings of a board of medical examiners, which is transmitted herewith (*or, as the case may be*).

——— ———.

LETTER TO MEDICAL MEMBERS OF BOARD DIRECTING PHYSICAL EXAMINATION.

NAVAL RETIRING BOARD,
Navy Yard, Washington, March —, 19—.

From: President Naval Retiring Board.

To: Medical Director R——— S. T———, U. S. Navy, and Surgeon U——— V. W———, U. S. Navy.

Subject: Examination of Captain Q——— R. S———, U. S. Navy.

1. You will make a careful examination into the past and present physical and mental condition of Captain Q——— R. S———, U. S. Navy, whose case has been referred to this board for examination, and report as to his capacity to perform the duties appropriate to his commission, in conformity with Title XV, chapter 3, of the Revised Statutes and the act of March 4, 1911.

2. Besides a personal examination, you will examine closely all matter transmitted to the board in this case by the Bureau of Navigation from the files and records of the Navy Department, and you will also endeavor to obtain

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from any other authentic source within your reach such information as will aid the board in the performance of its duties. This information you will be prepared to impart to the board orally, in the form of an opinion. After having heard the evidence of the officer undergoing examination, in case he cares to introduce such evidence, you will then report in writing, which shall be in the form of a sworn statement.

3. In case you find the officer under examination incapacitated for active service you will state whether, in your opinion, his disability is the result of an incident of the service (whether his incapacity was, or was not, contracted in the line of duty).

A——— B. C———.

LETTER FROM MEDICAL MEMBERS TO PRESIDENT OF BOARD.

NAVAL RETIRING BOARD,
Navy Yard, Washington, D. C., March —, 19—.

From: Medical Director R——— S. T———, U. S. Navy, and Surgeon U——— V. W———, U. S. Navy.

To: President Naval Retiring Board.

Subject: Examination of Captain Q——— R. S———, U. S. Navy.

1. We have carefully and separately examined Captain Q——— R. S———, as to his past and present mental and physical condition, together with the records pertaining to his case, and report as follows:

Captain S——— is — years old and has been — years in the naval service.

He has suffered from some of the common ailments, including ———, which are shown to have originated in the line of duty (and with ———, which are shown not to have so originated). The foregoing ailments have no bearing (have the following bearing) on his present condition.

On July —, 19—, he was transferred from the *Texas* to the Naval Hospital, Norfolk, Va., with heart disease, which originated in the line of duty. (*The medical history should be here set forth in full.*)

We believe him to be suffering from a chronic inflammation of the heart.

We consider this condition to be permanent, by reason of which he is incapacitated for active service in the Navy, and that his incapacity is (not) the result of an incident of the service.

R——— S. T———,
Medical Director, U. S. Navy.
U——— V. W———,
Surgeon, U. S. Navy.

Sworn to and subscribed before me, March —, 19—.

A——— B. C———,
Rear Admiral, U. S. Navy, President of Board.

692

Var. 1.—We find that ——— is suffering from neurasthenia, which, by the records, is shown to have originated in the line of duty.

We consider this condition to be temporary and, therefore, he is not permanently incapacitated for active service in the Navy. We find that he is at present unfit for duty, and recommend that he be ordered to a naval hospital for treatment and further observation.

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Var. 2.— ———. We find that he is at present unfit for duty, and recommend that he be granted sick leave for three months.

Var. 3.— ———. We therefore find that ——— is not incapacitated for active service.

Var. 4.—If the officer is being examined because of failure to qualify physically for promotion:

We consider this condition to be permanent, by reason of which he is incapacitated for service in the Navy, and that his incapacity was (not) contracted in the line of duty.

694

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X.

MARINE EXAMINING BOARDS.

(Chapter XXI—Part I.)

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MARINE EXAMINING BOARDS.

RECORD OF PROCEEDINGS

OF A

MARINE EXAMINING BOARD

CONVENED AT

THE MARINE BARRACKS, NAVY YARD, MARE ISLAND, CAL.,

IN THE CASE OF

FIRST LIEUTENANT X——— Y. Z———, U. S. MARINE CORPS.

AUGUST 16, 19—.

82 to 92

Precept: *See form, p. 473.*

737; 651

EXAMINING BOARD ROOM, MARINE BARRACKS,
Navy Yard, Mare Island, Cal., August 23, 19—.

737; 646

The board met at 10 a. m., August 16, 19—, pursuant to an order; copy prefixed, marked "A."

(See variation, p. 437.)

Present:

Major A——— B. C———, U. S. Marine Corps;
Major D——— E. F———, U. S. Marine Corps;
Surgeon G——— H. K———, U. S. Navy;
Surgeon L——— M. N———, U. S. Navy; and
Captain O——— P. Q———, U. S. Marine Corps, members; and
First Lieutenant R——— S. T———, U. S. Marine Corps, recorder.

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Var. 1.—Major D——— E. F———, U. S. Marine Corps, a member, was absent on account of illness (*or other cause*). In view of the fact that this was only temporary in its nature, the board adjourned to meet the following day.

The board met at 10 a. m., August 17, 19—.

Present: All the members and the recorder.

Var. 2.—Major D——— E. F———, U. S. Marine Corps, a member, was absent on account of illness (*or other cause*), which would prevent his attendance for an indefinite time. The president, therefore, addressed a letter to the convening authority in the matter, and the board then adjourned to await his further action in the premises. Copy of letter appended, marked "———."

First Lieutenant X——— Y. Z———, U. S. Marine Corps, reported for examination in obedience to orders, copy prefixed, marked "B."

706; 622

The precept (and orders altering the same were) was (were) read by the recorder, and there was no objection to any member.

(*See variation under Naval Examining Board, p. 438.*)

707; 631

The board and the recorder were duly sworn.

708; 709

The candidate stated that he was ready for examination.

The recorder read the medical record of the candidate; appended, marked "C."

715

The candidate submitted a certificate, appended, marked "D," as to his physical qualifications.

738

The candidate was then directed to report to the board of medical examiners for physical examination, pending which the board took a recess.

713; 744 to 745

The board reassembled. Present: All the members, the recorder, and the candidate.

The report of the board of medical examiners that the candidate is physically qualified for promotion, was read by the recorder, adopted by the board, and appended, marked "E." The medical officers were excused from further attendance.

713; 714; 716

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Var.—The report of the medical officers, that the candidate is not physically qualified for promotion, was read by the recorder, concurred in by the full board, and appended, marked "———." The board then resolved itself into a retiring board. (*Proceed as in a marine retiring board.*)

718

The board then proceeded with the moral and professional examination of the candidate as follows:

A communication, appended, marked "———," was received from the Commandant of the Marine Corps, transmitting the papers named therein, which were duly considered by the board, and which are appended, marked "———" to "———."

707; 632 to 633

Var.—The board was cleared. (*All persons shall withdraw except the board.*)

The board was opened. The candidate entered and was informed that his mark in general efficiency was unsatisfactory (his moral fitness was not assumed) owing to the following adverse evidence of record, which was read by the recorder:

720; 730

Copy of general court-martial order, dated June —, 19—; marked "—."

Copy of letter of reprimand from the Secretary of the Navy, dated June —, 19—; marked "—."

Report by Colonel ——— ———, U. S. Marine Corps, commanding First Brigade of Marines, Philippine Islands, dated May —, 19—; marked "—."

* * * * * * *

The candidate was informed that he would be heard upon the foregoing matters, and he asked permission to introduce P——— Q——— as a witness, which request was granted. The witness entered and was duly sworn.

710

(*Record testimony as for defense in a general court-martial.*)

First Lieutenant Z——— had nothing further to offer. (*Or*, First Lieutenant Z——— was, at his own request, called as a witness in his behalf, and duly sworn.)

August 17. Subject, administration; began, 11.15 a. m.; ended, 12.30 p. m.

August 17. Subject, drill regulations and signaling; began, 1.30 p. m.; ended, 2.25 p. m.

August 17. Subject, firing regulations; began, 2.30 p. m.; ended, 4 p. m.

The candidate was then directed to proceed at daylight (*or as may be*) the following morning to make a road (*or position*) sketch (*locality assigned*) and to bring the same before the board at 9 a. m. the next morning, which direction was complied with.

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August 18. Subject, completing road sketch; began, 9 a. m.; ended, 11 a. m.

August 18. Subject, fire discipline; began, 11.05 a. m.; ended, 12.15 p. m.

Var.—The oral examination of the candidate in fire discipline was unsatisfactory, and the board, therefore, proceeded with a written examination in that subject; appended, marked "———." (*The questions asked and the candidate's answers shall be appended as written.*)

August 20. Subject, minor tactics; began, 1.30 p. m.; ended, 2.30 p. m.

August 20. Subject, naval ordnance and gunnery; began, 2.35 p. m.; ended, 4 p. m.

722 to 728

Var.—The candidate presented a certificate from the Marine Officers' School (*or, as the case may be*), dated ———, which was accepted by the board in lieu of professional examination, subject to the provisions of section 729, Naval Courts and Boards. Copy of certificate is appended, marked —.

729

The candidate was then assigned a problem; the solution was submitted by the candidate; appended, marked "———."

The exercises in practical drill were next proceeded with.

A copy of all questions asked in the several subjects, a description of sketches and problems assigned, and a list of the practical maneuvers explained and performed, are appended, marked "———."

The candidate submitted a certificate, appended, marked "———," that he had received no unauthorized assistance.

738

The board assigned the several marks, as follows:

727; 731

The board is of the opinion that First Lieutenant X——— Y. Z———, U. S. Marine Corps, has the mental, physical, moral, and professional qualifications to perform the duties of the next grade (grades) to which he will be eligible, to wit ——— (and ———), and does, therefore, recommend his promotion thereto.

732 to 733

Var. 1.— ——— has the mental, physical, and moral qualifications, but has not the professional qualifications to perform the duties of the next grade to which he will be eligible, to wit ———, and does not, therefore, recommend his promotion thereto. (*Or, as the case may be.*)

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(*When the candidate holds the rank of colonel.*)

Var. 2.— ——— has the mental, physical, and moral qualifications to perform the duties of the next grade to which he will be eligible, to wit ———, and does, therefore, recommend his promotion thereto.

712

A——— B. C———,
Major, U. S. Marine Corps, President.
D——— E. F———,
Major, U. S. Marine Corps, Member.
O——— P. Q———,
Captain, U. S. Marine Corps, Member.

R——— S. T———,
First Lieutenant, U. S. Marine Corps, Recorder.

734

PRECEPT.

NAVY DEPARTMENT,
Washington, August —, 19—.

From: The Secretary of the Navy.
To: Major A——— B. C———, U. S. Marine Corps, Marine Barracks, Navy Yard, Mare Island, California, via commandant.
Subject: Precept for a Marine Examining Board.

1. A marine examining board for the examination of such candidates for admission or promotion as may be directed to appear before it, is hereby ordered to convene at the Marine Barracks, Navy Yard, Mare Island, California, at 10 a. m., Monday, August —, 19—, or as soon thereafter as practicable.

2. The board will consist of yourself as president and of Major D——— E. F———, U. S. Marine Corps; Surgeon G——— H. K———, U. S. Navy; Surgeon L——— M. N———, U. S. Navy; and Captain O——— P. Q———, U. S. Marine Corps, as members.

3. First Lieutenant R——— S. T———, U. S. Marine Corps, will act as recorder.

4. The proceedings of the board will be conducted and the record forwarded in accordance with the provisions of Naval Courts and Boards.

705

MEDICAL CERTIFICATE OF CANDIDATE.

MARINE BARRACKS, NAVY YARD,
Mare Island, California, August —, 19—.

I hereby certify that I am, to the best of my knowledge and belief, physically qualified to perform all the duties pertaining to the rank to which I am a candidate for promotion, and that I am at present free from all bodily ailments (except ———).

———,
First Lieutenant, U. S. Marine Corps.

738

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CERTIFICATE OF CANDIDATE AT CONCLUSION OF EXAMINATION.

MARINE BARRACKS, NAVY YARD,
Mare Island, Cal., August —, 19—.

I hereby certify that during my examination just concluded I have received no assistance from any unauthorized source.

X——— Y. Z———,
First Lieutenant, U. S. Marine Corps.

738

LETTER FROM PRESIDENT TO MEDICAL MEMBERS WHEN BOARD RESOLVES ITSELF INTO A RETIRING BOARD.

MARINE BARRACKS,
Navy Yard, Mare Island, Cal., August —, 19—.

From: Major A——— B. C———, president marine examining board.
To: Surgeon G——— H. K———, U. S. Navy, and Surgeon L——— M. N———, U. S. Navy.
Subject: Examination into the past and present physical condition of Lieutenant X——— Y. Z———, U. S. Marine Corps.

1. You will make a careful examination into the past and present physical condition of First Lieutenant X——— Y. Z———, U. S. Marine Corps, whose case has been referred to this board for examination and report as to his capacity to perform the duties appropriate to his commission, in conformity with Title XIV, chapter 2, of the Revised Statutes of the United States.

2. Besides a personal examination, you will examine closely all matter transmitted to the board in this case by the Commandant of the Marine Corps from the files and records of his headquarters and from those of the Navy Department, and you will also endeavor to obtain from any other authentic source within your reach such information as will aid the board in the performance of its duties, and will report the result in writing.

3. In case you find the officer under examination incapacitated for active service, you will state whether, in your opinion, his disability is the result of an incident of the service.

718; 762

REPORT OF MEDICAL MEMBERS TO BOARD WHICH RESOLVES ITSELF INTO RETIRING BOARD.

(*See form of report under marine retiring board, which shall also be used by examining boards, p. 481.*)

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XI.

MARINE RETIRING BOARDS.

(Chapter XXII—Part I.)

38217°—18——31

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MARINE RETIRING BOARDS.

RECORD OF PROCEEDINGS

OF A

MARINE RETIRING BOARD

CONVENED AT

THE MARINE BARRACKS, WASHINGTON, D. C.,

IN THE CASE OF

FIRST LIEUTENANT X——— Y. Z———, U. S. MARINE CORPS,

JUNE 1, 19—.

82 to 92

Precept: *See form, p. 480.*

767; 651

MARINE RETIRING BOARD,
Marine Barracks, Washington, June 2, 19—.

767; 646

The board met at 10 a. m. June 1, 19— (this day), pursuant to an order, copy prefixed, marked "A."
See Variation, page 437.)
Present:
Colonel C——— B. A———, U. S. Marine Corps;
Medical Inspector F——— D———, U. S. Navy;
Major K——— H. G———, U. S. Marine Corps;
Major N——— M. L———, U. S. Marine Corps; and
Surgeon Q——— P. O———, U. S. Navy, members; and
First Lieutenant T——— S———, U. S. Marine Corps, recorder.

748 to 752

First Lieutenant X——— Y. Z———, U. S. Marine Corps, reported in obedience to an order, copy prefixed, marked "B."

746; 753

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The precept was read by the recorder, and there was no objection to any member.

(*See Variation, page 438.*)

755; 685

The board and the recorder were duly sworn.

757; 758

A communication, appended, marked "C," was received from the Commandant of the Marine Corps, transmitting the papers named therein, which are appended, marked "———" to "———." Those marked "———" to "———," inclusive, were read.

The medical officers were directed to examine into the past and present physical condition of First Lieutenant Z———, letter of instructions appended, marked "———."

762

Pending the physical examination, the board took a recess (adjourned) in this case until 2 p. m., June 1, 19— (until 11.30 a. m., this day), when it reconvened; present, the entire board and the officer under examination.

First Lieutenant X——— Y. Z———, U. S. Marine Corps, was asked whether he wished to be retired, and replied in the affirmative.

763

He was then duly sworn as a witness.

759

Examined by the recorder (by the board):

1. Q. State the nature of your disability, its cause, and how long you have suffered from it.

A. * * *.

(*The witness may submit a written statement, to be read and appended to the record.*)

* * * * * * *

Medical inspector F——— D———, U. S. Navy, a member of the board, was duly sworn:

759

Examined by the recorder (board):

1. Q. Please submit to the board the result of your examination of First Lieutenant Z———.

A. The witness submitted a written report, signed by himself and by Surgeon Q——— P. O———, U. S. Navy, also a member of the board, which was read and appended, marked "———."

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2. Q. From what cause does First Lieutenant Z———'s disability proceed?

A. * * *

3. Q. Is the disability permanent?

A. * * *

4. Q. Is First Lieutenant Z———'s disability such as to incapacitate him for active service?

A. * * *

First Lieutenant Z——— stated that he had no questions to ask (asked the following questions:).

764

Surgeon Q——— P. O———, U. S. Navy, a member of the board was duly sworn:

1. Q. From what cause does First Lieutenant Z———'s disability proceed?

A. * * * *etc.*

764

(*In case the officer before the board has stated that he does not desire retirement his examination by the recorder or the board is postponed until this point.*)

763

First Lieutenant Z——— stated that he did not desire to rebut the evidence of the medical officers, or to take the stand as a witness in his own behalf. He was then discharged from further attendance.

Var.—See variations under naval retiring board, pp. 460–461.

765; 684

The board, having deliberated on the evidence before it, decided that First Lieutenant X——— Y. Z———, U. S. Marine Corps, is incapacitated for active service by reason of ——— (*state reason*), and that his incapacity is (not) the result of an incident of the service.

766

Var. 1.—(*In the case of a candidate for promotion*).—The board, having deliberated on the evidence before it, decided that Lieutenant X——— Y. Z———, U. S. Marine Corps, is incapacitated for active service by reason of (*state the physical disability*) contracted (not) in the line of duty.

718; 742

Var. 2.— ——— decided that First Lieutenant ———, U. S. Marine Corps, is not incapacitated for active service.

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Var. 3.— ——— decided that ——— is temporarily incapacitated for active service by reason of malarial poisoning, contracted (not) in line of duty, and recommends that he be granted sick leave for ——— months.

C——— B. A———,
Colonel, U. S. Marine Corps, President.
F——— D———,
Medical Inspector, U. S. Navy, Member.
K——— H. G———,
Major, U. S. Marine Corps, Member.
N——— M. L———,
Major, U. S. Marine Corps, Member.
Q——— P. O———,
Surgeon, U. S. Navy, Member.
T——— S. R———,
First Lieutenant, U. S. Marine Corps, Recorder.

767

PRECEPT.

NAVY DEPARTMENT,
Washington, May —, 19—.

From: The Secretary of the Navy.
To: Colonel C——— B. A———, U. S. Marine Corps, Marine Barracks, Washington, D. C.
Subject: Precept for a Marine Retiring Board.

1. A marine retiring board, consisting of yourself, as president, and of Medical Inspector F——— D———, U. S. Navy; Major K——— H. G———, U. S. Marine Corps; Major N——— M. L———, U. S. Marine Corps; and Surgeon Q——— P. O———, U. S. Navy, members, is hereby ordered to convene at the Marine Barracks, Washington, D. C., at 10 a. m. Monday, June 1, 19—, or as soon thereafter as may be practicable.

2. First Lieutenant T——— S. R———, U. S. Marine Corps, will act as recorder.

3. The board will examine and report upon such officers as may be ordered by the Secretary of the Navy to appear before it, in conformity with sections 1622 and 1623, and Title XIV, chapter 2, of the Revised Statutes.

4. The board will not examine officers who are senior to any non-medical member of the board without specific instructions from the Secretary of the Navy in each case.

5. The proceedings of the board will be conducted and the record forwarded in accordance with the provisions of Naval Courts and Boards.

LETTER TO OFFICER.

NAVY DEPARTMENT,
Washington, May —, 19—.

From: Secretary of the Navy.
To: First Lieutenant X——— Y. Z———, U. S. Marine Corps.
Subject: Orders to appear before a retiring board.

1. Proceed to Washington, D. C., and report to Colonel C——— V. A———, U. S. Marine Corps, president of a marine retiring board, at the marine barracks, at 10 a. m., Monday, June 1, 19—, for examination in conformity with

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sections 1622 and 1623, and Title XIV, chapter 2, of the Revised Statutes of the United States.

2. Upon completion of this duty await orders at Washington, D. C.

LETTER TO MEDICAL MEMBERS OF THE BOARD.

(*See letter from president of marine examining board to medical members when that board resolves itself into a retiring board, page 474.*)

REPORT OF THE MEDICAL MEMBERS TO THE BOARD.

MARINE BARRACKS, *Washington, June 2, 19—.*

(*Surname.*) (*Christian name.*)

(*Rank.*)

Age, ---------- } In 19—.
Years of service, ---------- }

(*This form is intended as a general guide only and should in no way restricted the scope of the inquiry, which should be as thorough as possible.*)

History of the case (*obtained from the officer before the board*):

PRESENT CONDITION.

Vision: Right eye, ----------
Left eye, ----------
Right eye corrected to ---------- by ----------
Left eye corrected to ---------- by ----------
Hearing: Right ear, ----------
Left ear, ----------
Pulse: Rate, ----------
Quality ----------
Condition of arteries, ----------
Figure and general appearance, ----------
Weight, ---------- pounds; height, ---------- inches.
Chest measurement: At expiration, ---------- inches.
At inspiration, ---------- inches.
Mobility, ----------
Bones and joints, ----------

Skin, ----------
Nervous system, ----------
Respiratory system, ----------
Veins, ----------
Varicocele, ----------
Varicose veins, ----------

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Digestive system, _____
Hernia, _____
Genito-urinary system, _____
Is he incapacitated for active service? _____
Nature and degree of disability, _____
How does it incapacitate? _____
Is it permanent? _____
Is the incapacity the result of an incident of service? _____

_____ _____,
_____, *U. S. Navy.*
_____ _____,
_____, *U. S. Navy.*

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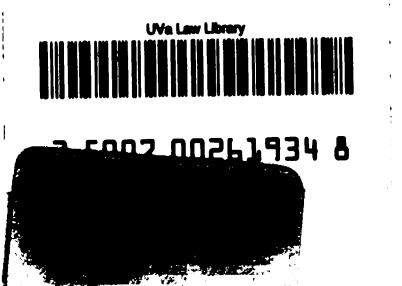
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